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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-5519

CARL WHITE,
Petitioner,

vs.

CLOVIS CARL GREEN, JR.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI FROM FINAL JUDGMENT ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI FROM FINAL JUDGMENT ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Carl White, Superintendent of the Missouri Training Center for Men at Moberly, Missouri, petitioner herein, by Attorney General John Ashcroft, State of Missouri, respectfully requests that this Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on July 13, 1979; both parties' motions for rehearing were denied on September 19, 1979.

REPORTS OF OPINIONS BELOW

On July 13, 1979, the United States Court of Appeals for the Eighth Circuit issued an Opinion affirming in part and reversing in part the District Court's "Order and Memorandum" which dismissed Mr. Green's § 1983 class action lawsuit because frivolous. 28 U.S.C. § 1915(d).

Both parties filed motions for rehearing and rehearing en banc which the Eighth Circuit denied on September 19, 1979. To the best of Mr. White's knowledge neither the July Opinion nor the September denials have been published. Reproduction of the Opinion and denials will be found in Appendix A.[1]

The Order and Memorandum of the United States District Court for the Eastern District of Missouri, Eastern Division, per the Honorable John F. Nangle, issued on October 26, 1978, dismissing Mr. Green's § 1983 lawsuit because frivolous within the meaning of 28 U.S.C. § 1915(d), is to the best of Mr. White's knowledge not published and will be found in Appendix B. It is this Order from which Mr. Green took an appeal to the Eighth Circuit whose Opinion, in turn, is sought to be reviewed and reversed, in part.

JURISDICTIONAL STATEMENT

Title 28 U.S.C. § 1254(1) states that cases in the courts of appeals may be reviewed by this Court

> By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . .

Title 28 U.S.C. § 2101(c) states that

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. . . .

1. On October 29, 1979, counsel for Mr. White mailed a letter to the Clerk of the Eighth Circuit requesting that he certify and transmit to this Court the entire record in this case. On October 30, 1979, the Eighth Circuit Clerk refused the request stating that this Court had instructed him not to forward "transcripts of the proceedings" unless requested. Only those documents deemed particularly important will be included in this Petition.

This case involves Mr. Green's claim that while incarcerated at the Moberly prison for approximately six weeks in 1976 he was denied his federal constitutional right to practice his so-called religion. District Court Judge Nangle dismissed the complaint upon concluding that it was frivolous within the meaning of 28 U.S.C. § 1915(d). On appeal the Eighth Circuit affirmed in part and reversed in part after determining that certain claims made by Mr. Green did state a cause of action and ordered an evidentary hearing in regard to them. This Opinion was issued on July 13, 1979; the court denied both parties' motions for rehearing and rehearing en banc on September 19, 1979. The Eighth Circuit's decision is properly sought to be reviewed by a request of certiorari to that Court and is made well within ninety days from September 19, 1979. Consequently, no extension of time in which to file this Petition has been sought.

QUESTIONS PRESENTED FOR REVIEW

On October 24, 1978, Mr. Green, a caucasian male, filed a "Civil Rights Complaint as a Class Action" in the United States District Court for the Eastern District of Missouri (See, Appendix C). The suit was brought under the aegis of 42 U.S.C. § 1983. In his complaint Mr. Green asseverated that he was "a minister of God with the HUMAN AWARENESS UNIVERSAL LIFE CHURCH. . . ." Mr. Green further claimed that he was incarcerated at the Moberly prison, under the custody of Mr. White, in 1976 and during that period of time there were many inmates who were members of Mr. Green's so-called church but who were not allowed to practice the tenets of the so-called religion. Mr. Green claimed that Mr. White's refusal to allow members

of the so-called church to practice certain claimed rituals was sought to be redressed, on a class action basis, because a violation of those inmates' federal constitutional rights. As relief Mr. Green requested that the suit be allowed to proceed as a class action, that the "Human Awareness Universal Life Church" be deemed a legitimate religion and that, *inter alia*, Mr. White "pay money damages of $1,000,000.00 (one million dollars) to [Mr. Green] for the violation of his freedom of religion."

On October 26, 1978, Judge Nangle, without any notice to Mr. White, dismissed the lawsuit because frivolous. 28 U.S.C. § 1915(d). On appeal the Eighth Circuit affirmed in part and reversed in part. In that Opinion the Eighth Circuit concluded that Mr. Green could not maintain a class action because he was not a member of the class, but that the Complaint contained individual claims relating to Mr. Green which were not barred by the doctrine of *res judicata* and remanded the case for "an evidentary hearing" in which inquiry was to be

> . . . strictly limited to whether defendant White, during the brief period in 1976 that Green was incarcerated at Moberly prevented Green personally from participating in church worship services and bible study classes, from wearing long hair and a beard as an incident of the exercise of his religion, or from distributing the religious literature of his church and, if so, whether Green's civil rights were thereby violated.

Based upon these facts the following questions emerge:

1. Has Mr. Green presented individual claims in his Complaint or is the lawsuit exclusively a class action which Mr. Green may not bring as a representative party because he is not a member of the class he himself has defined?

2. Assuming, *ad arguendo*, that the Complaint contains individual claims which Mr. Green may litigate, is he barred

from so doing by *res judicata*? Stated more specifically, is this lawsuit the product of conscious piecemeal litigation for the purpose of harassment as evidenced by the fact that Mr. Green has filed more than 500 lawsuits since his incarceration in the Missouri penal system in 1975?

3. Is the Eighth Circuit's Order mandating an *evidentiary hearing* concerning the issues raised by Mr. Green, which were found to state a cause of action, illegal because it denies Mr. White his Seventh Amendment right to a jury trial and further denies him the opportunity to raise additional affirmative defenses in the District Court?

CONSTITUTIONAL PROVISIONS

Title 42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit and equity, or other proper proceeding for redress.

Seventh Amendment to the United States Constitution:

> In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law.

First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fourteenth Amendment to the United States Constitution:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

> Section 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any state, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.
>
> Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims shall be held illegal and void.
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

HISTORY OF THE CASE

On October 24, 1978, Mr. Green filed "a class action suit" under the aegis of 42 U.S.C. § 1983 against Mr. White seeking injunctive and declaratory relief and one million dollars in damages (Appendix C).

Mr. Green contended that while he was a prisoner at Moberly in 1976 the superintendent of that facility, Mr. White, refused to recognize the so-called Human Awareness Universal Life Church. Mr. Green posited, *inter alia,* that Carl White unconstitutionally failed to recognize this so-called church as a legitimate religion; that he refused to allow the inmate members of the so-called church to wear long hair and beards as an incident of the exercise of their alleged religion; additionally, it was contended that Mr. White illegally denied the members of the so-called church the right to distribute its so-called religious literature.

Among various requests for relief found in the Complaint is the following: "That this Court declare this suit is a class action suit on behalf of all church members now at the Moberly prison." (See, Appendix C at A12).

On October 26, 1978, Judge Nangle, on his own motion, dismissed the lawsuit. In his "Memorandum" Judge Nangle stated:

> This matter is before the Court upon the Court's own motion to consider whether this cause should be dismissed as frivolous. 28 U.S.C. § 1915(d).
>
> Plaintiff filed this suit prose on behalf of himself and other inmates of his church seeking $1,000,000.00 in damages. Plaintiff alleges that he is a minister with the Human Awareness Universal Life Church. In

1976, plaintiff was a prisoner at the Moberly prison where he was unable to exercise his religious beliefs. Plaintiff alleges that the church believes in long hair and beards, conjugal visits and banquets on religious holidays. Plaintiff alleges that defendant, Superintendent of the Missouri Training Center for Men at Moberly, Missouri, refused to appoint plaintiff as a full-time paid chaplain and refuses to allow plaintiff to return to the institution, upon release, at a full salary as minister of the church. Plaintiff alleges in addition that defendant has refused to allow distribution of the church's newspapers.

It is the Court's conclusion that his complaint is frivolous as a matter of law and must be dismissed. [Citations omitted].

On October 31, 1978, Mr. Green filed a "Notice of Appeal and Motion for Leave to Appeal In Forma Pauperis." On November 6, 1978, Judge Nangle denied ". . . plaintiff's Motion for Leave to Appeal In Forma Pauperis . . . the court being of the opinion that this cause is frivolous and that there is no meritorius issue for appeal." It appears that on November 9, 1978, Mr. Green filed a "Notice of Appeal" in the Eighth Circuit.

On October 18, 1978, the Eighth Circuit concluded that although some of Mr. Green's contentions were frivolous an evidentiary hearing was required in regard to ". . . whether the defendant's alleged denial of [Mr. Green's] right to wear long hair and beards [sic] as an incident of the exercise of his religion . . . and the defendant's alleged denial of [Mr. Green's] rights to distribute the religious literature of his church" amounted to a denial of *Mr. Green's* federal constitutional rights. The undersigned, as counsel for Mr. White, first became aware of this lawsuit when he received in the mail the just-mentioned Order. See,

Mr. White's "Petition for Rehearing, With Suggestion that the Case Be Reheard in Banc" filed in the Eighth Circuit on January 2, 1979.

In Mr. White's January Motion for Rehearing it was strenuously asserted that Judge Nangle correctly dismissed Mr. Green's § 1983 action because the latter was barred from b.inging it in the first instance since he was not a member of the class upon whose behalf he purported to institute the action and, in any event, the lawsuit was duplicative of other actions initiated by Mr. Green which were either settled with prejudice at the district court level or decided adversely to Mr. Green by the Eighth Circuit. In response to Mr. White's January Motion for Rehearing Mr. Green responded not by denying that the instant action was a "class action" but by stating that he was ". . . a member of the class of church members as the leader of the church members at Moberly."

On January 5, 1979, the Eighth Circuit issued an Order striking the last paragraph from its Order dated December 18, 1978, and declared that

> . . . the appeal may proceed limited to the two issues of [Mr. Green's] alleged denial of *his* rights to wear long hair and beards [sic] as an incident to the exercise of *his* religion, and [Mr. Green's] alleged denial of *his* right to distribute the religious literature of *his* church. [Emphasis added].

Also, on January 5, 1979, Mr. Green filed a "Motion for Rehearing En Banc" asserting that the Eighth Circuit erred in its ruling of December 18, 1978, because he was entitled to all relief requested.

On January 16, 1979, the Eighth Circuit specifically overruled all pending motions for rehearing filed by either

party. On January 19, 1979, Mr. Green was denied appointment of counsel.

After both parties filed briefs the Eighth Circuit issued an Opinion on July 13, 1979. In that Opinion it was determined that Mr. Green could not maintain the lawsuit "as a class action"; that Mr. Green was not barred by the doctrine of *res judicata* from litigating some of the claims filed in the original petition; and, that the case be remanded for "an evidentiary hearing" in which inquiry was to be

> . . . strictly limited to whether defendant White, during the brief period in 1976 that Green was incarcerated at Moberly, prevented Green personally from participating in church worship services and bible study classes, from wearing long hair and a beard as an incident of the exercise of his religion, or from distributing the religious literature of his church, and, if so, whether Green's civil rights were thereby violated.

On July 30, 1979, Mr. White petitioned for rehearing upon these grounds: a) that the Opinion violated Mr. White's Seventh Amendment right to a jury trial by mandating that the case be remanded *solely* for an evidentiary hearing; b) that Mr. Green could not maintain the action because barred by the doctrine of *res judicata;* and, c) that Mr. Green's own Complaint clearly established that the action was initiated on behalf of a class and that Mr. Green's own personal religious rights were not in issue. On August 22, 1979, Mr. White supplemented his Motion for Rehearing by adverting to a "Memorandum and Order" issued by the Honorable Elmo B. Hunter in *Green v. Camper,* No. 79-4055-CV-C (U.S.D.C., W.D. Mo. August 16, 1979). Mr. White posited that that "Memorandum and Order" by Judge Hunter established that Mr. Green filed

lawsuits for the purpose of harassment and vexation and that the issue of religion had been raised by Mr. Green on previous occasions and decided adversely to him in every instance. (Judge Hunter's Opinion, just referred to, will be found in Appendix D).

On September 19, 1979, the Eighth Circuit denied both Mr. Green's and Mr. White's Motions for Rehearing. However, Chief Judge Gibson and Judge Ross dissented from the denial of Mr. White's Motion for Rehearing; Chief Judge Gibson filed a Dissent in which he stated that the District Court correctly dismissed Mr. Green's § 1983 lawsuit because: a) Mr. Green epitomized the worst fears of prisoner abuse of the judicial system since he had filed over 500 cases on his own behalf, and unaccountable others under the names of other inmates, and indulged in "bad faith efforts to harass public officials and deluge the courts with frivolous or malicious proceedings"; b) Mr. Green had previously sued Mr. White in regard to the alleged violation of Mr. Green's freedom of religion during his brief stay at the Moberly prison between March 2 and April 15, 1976, which litigation culminated in an Eighth Circuit decision reported at 589 F.2d 378 (8th Cir. 1979), which should foreclose Mr. Green by virtue of the doctrine of *res judicata* from relitigating similar issues; and, c) that the remand for an evidentiary hearing was questionable in view of Mr. Green's request for a jury trial. Chief Judge Gibson concluded his dissent by stating, in the penultimate paragraph:

> Green's frivolous and often scurrilous filings have consumed vast quantities of judicial resources, placing additional burdens on the public purse, and we should not provide him with an opportunity further to indulge himself in this fashion.

MR. GREEN AS LITIGATOR

Mr. Green, a caucasian male, is very much a unique individual. In this section of the Petition Mr. White will set out those factors which make Mr. Green, in terms of litigation, singular in this nation. It is Mr. White's intent to establish that Mr. Green's frivolous and malicious lawsuits repeatedly initiated, in piecemeal fashion, against a relatively few defendants prove his bad faith in bringing this action and support the contention that this action is barred by the doctrine of *res judicata* and that, in addition, Mr. Green is a litigator of some skill, acquired from extensive experience and hence his legal papers are not to be accorded the normal *pro se* inmate grant of liberal construction.

In July, 1975, Mr. Green entered the Missouri State Penitentiary at Jefferson City, Missouri, pursuant to pleading guilty to a charge of rape in the Jackson County, Missouri, Circuit Court, for which he received a sentence of ten years. See, *Green v. Garrott,* 71 F.R.D. 680, 689 (W.D. Mo. 1976); *Green v. Wyrick,* 414 F.Supp. 343 (W.D. Mo. 1976). Since that time Mr. Green has filed, in epic proportions, civil rights and habeas corpus actions on behalf of himself and other inmates. An early partial catalogue of some of these actions, involving state and federal prison officials, and in some instances judicial officers, appears in *Green v. Garrott, supra;* see also, *Green v. Wyrick, supra.* As stated by Judge Hunter in *Green v. Garrott, supra*:

> . . . Clovis Carl Green, Jr., has filed on his behalf a total of 219 civil cases, in the trial and appellate courts in a relatively brief period of time and is continuing to file such cases at an accelerated rate. A fair and realistic overview of these cases and Mr. Green's singular lack of success of carrying the burden of showing

> they are meritorious inescapably brings the conclusion that Clovis Carl Green, Jr., indeed does have a continuing history of engaging in a gross abuse of the judicial process which is impeding the ability of the judiciary to carry out its proper functions. *Id.*, at 692.

In *Green v. Wyrick*, 428 F.Supp. 732 (W.D. Mo. 1976), Judge Hunter found that Mr. Green not only engaged in grossly abusing the judicial system by repeatedly filing frivolous and harassive lawsuits, but that he deliberately and intentionally deceived the Court with respect to his financial status, that he failed to follow court rules, and that he did not faithfully represent inmates on whose behalf he filed lawsuits. Pursuant to this finding Judge Hunter ordered that Mr. Green be enjoined from writing any more writs for other inmates for use in federal court in the Western District of Missouri and from otherwise practicing law in the penitentiary with litigation in the District Court in view. Undaunted, Mr. Green has continued, and continues, to file lawsuits in the Western District not only for himself but on the behalf of others as well. Recently the Eighth Circuit affirmed Mr. Green's convictions for contempt of the injunction. *In the Matter of the Alleged Contumacious Conduct of Clovis Carl Green, Jr.*, 586 F.2d 1247 (8th Cir. 1978). Also recently, Mr. Green was convicted by a jury of once again violating the injunction and was sentenced by Judge Clark, United States District Court for the Western District of Missouri, to a period of ten years incarceration in the federal penal system. *United States v. Green*, No. 78-0413-01-CR-C-W-3 (U.S.D.C. W.D. Mo., July 5, 1979). That conviction is presently on appeal to the Eighth Circuit.

Judge Hunder was unfortunately prescient when he stated in *Green v. Garrott, supra*, on August 9, 1976, that Mr. Green was ". . . continuing to file such cases at an

accelerated rate. . . ." On November 15, 1978, United States Magistrate Ralston, Western District of Missouri, filed a Report and Recommendation in *Green v. Duram*, No. 78-422-CV-C (W.D. Mo. November 15, 1978)[2] stating that *since* 1966 Mr. Green had filed thirty-four lawsuits in the United States District Court for the Western District of Missouri, four lawsuits in the United States District Court for the Eastern District of Missouri, sixty-six lawsuits in the Eighth Circuit, eleven lawsuits in this Court, eight lawsuits in the Missouri Supreme Court, seventeen lawsuits in the Missouri Court of Appeals, four lawsuits in the Circuit Court of Jackson County, and fifteen lawsuits in the Cole County Circuit Court. At the conclusion of this cataloguing, Judge Ralston noted:

> . . . and, judging from his correspondence addressed to this Court [Mr. Green] intends to continue his abusive process at an accelerated, continued and unabated pace.

Judge Hunter had recent occasion to update Mr. Green's litigation history. *Green v. Camper*, No. 79-4055-CV-C (August 16, 1979) (Appendix D). Therein Judge Hunter concluded that Mr. Green was malicious in the filing of five hundred frivolous lawsuits. It should be noted that in *Green v. Camper* Mr. Green requested equitable relief and damages in the sum of one million dollars for claimed violations of his federally protected rights, including the alleged refusal of prison officials to recognize his claimed "religion," the "Human Awareness Universal Life Church." Mr. White believes that certain excerpts from that Opinion should be brought to the attention of this Court:

---

2. This Opinion by Judge Ralston has been placed in the Appendix of this Petition for this Court's convenience: see, Appendix E.

". . . The Court . . . finds that (1) inmate Green's contentions are duplicative of other contentions he has made in other cases he has filed in the federal court; that (2) his claims are frivolous under 28 U.S.C. § 1915(d) for the same reasons the Magistrate found them to be frivolous, that (3) these claims of petitioner are malicious under 28 U.S.C. § 1915(d); and finally, (4) that this case is but another case in which Petitioner Green is attempting in total bad faith to so swamp the docket of the United States District Court, Western District of Missouri, with frivolous cases, maliciously brought as to cause the Court to be unable to administer and process its docket. Petitioner is of the apparent mind that by flooding the Court with litigation and rendering it unable to administer its docket because of the sheer volume of such frivolous and malicious filings he will cause the Court to order his release from custody.

* * *

"Since July 1, 1979, inmate Green has filed additional cases, including the instant case, bringing his total filings to over five hundred cases. This he has done in spite of being enjoined November 1, 1976, from being a writ writer for other inmates. In Green v. Wyrick, 428 F. Supp. 732 (W.D. Mo. 1976) there is detailed a vignette of his writ writing activities demonstrating that such activities were not beneficial or productive to the other inmates. It was found that he simply used alleged complaints of other inmates and their names to advocate his own contentions and interests to the detriment of the other inmates. He was totally ineffective and unsuccessful in such representations. And finally inmate Green was declared to have 'a continuing history of engaging in gross abuse

of the judicial process which is impeding the ability of the Judiciary to carry out its proper functions.' [Citation omitted.]

". . . . '. . . Petitioner frequently repeats allegations in several lawsuits and requests relief (therefor) in separate suits . . . .' . . . Because of his long history of engaging in such tactics after repeated warnings by the Court, it is clear that he persists for the intentional purpose of making it difficult and time consuming to the Magistrate and to the Court to process his litigation.

* * *

". . . Thus, it is clear that, in virtually every instance in which plaintiff's claims have appeared colorably valid on the face of his pleadings, an evidentiary probing of those claims has revealed total insubstantiality. [Citation omitted.]

* * *

"Inmate Green is the so-called founder of this 'Church', and claims to be the only one who can speak for it or prepare its litigation. According to him, no one of its 'members' can file any litigation without his consent. Other correspondence and pleadings of inmate Green make it clear that he is the 'church'.

* * *

"Inmate Green has not been content to personally and through 'church' action advance his desire to prevent the federal court from being able to process its docket but has resorted to intimidation tactics as a part of that plan. In early May, 1979, the Court received a threatening letter from a source styling itself 'American Revolutionary Army'. The letter threatened that women, children and many others would be killed if certain things were not done immediately by the

Judges of this Court, including the giving of a pardon or parole to every state prisoner who has less than five years to serve on his sentence and a paid chaplain for Clovis Green's 'church' . . . .

"All of the above is reflective of but some of the nearly innumerable acts of inmate Green deliberately designed to totally frustrate the judicial process and to obtain his release from the State Pennitentiary [sic]. Literally scores of other such acts of simliar design could be added to this opinion but the above should suffice to make it clear that inmate Green not only has but continues to take almost daily actions intended to so abuse the judicial process as to make it impossible for the United States District Court, Western District of Missouri, to process its docket. As earlier indicated, inmate Green's activities have not been limited to this Court. Other courts, including the Eighth Circuit Court of Appeals and the United States Supreme Court, also have come within his orbit.

* * *

"As stated in earlier opinions of this Court, unless the Courts of this nation are to be deemed to be powerless to stop such a flagrant abuse of the judicial process, one man will be able to preempt so much judicial time at the trial and appellate levels as to thwart the very ability of the judicial system to carry out its necessary judicial function of properly processing its criminal and civil docket of cases filed by other litigants who may have meritorious matters." (*Id.*, at pages 3, 30, 31, 33, 34, 35, 37, and 38).

Since virtually all of Mr. Green's five hundred lawsuits have been filed *in forma pauperis*, the Eighth Circuit's statement in *Wycoff v. Brewer*, 572 F.2d 1260, 1266-1267 (8th Cir. 1978), is applicable to him:

However, it is one thing to grant to prison inmates, including violent or recalcitrant ones, prospective, declaratory or injunctive relief designed to protect them in the future from unconstitutional practices or conditions. It is quite another thing to expose prison personnel, including personnel in the higher echelons of prison administration and policy formulation, to personal pecuniary liability in suits brought by largely irresponsible inmates under § 1983. Such suits are frequently without merit and may be maliciously motivated. An inmate may use a suit or a threat of a suit as a lever to obtain favorable treatment or a desirable work assignment. Since § 1983 suits are usually prosecuted in forma pauperis, and since prison officials may not constitutionally retaliate against a convict for invoking his right of access to the courts, inmates have essentially nothing to lose, including time, by prosecuting such actions, and they may gain something even if it is nothing but the satisfaction of harassing, inconveniencing and annoying those who have them in charge.

It is worthwhile to review here what Justice Powell stated in his concurring Opinion in *Rose v. Mitchell*, ... U.S. ....., 99 S.Ct. 2993, 3014 (1979):

> It is common knowledge that prison actions occupy a disproportionate amount of the time and energies of the federal judiciary. In the year ending June 30, 1978, almost nine thousand of the prisoner actions filed were habeas corpus petitions. [Citations omitted.] Apart from the burden of these petitions, many of which are frivolous, collateral review can have a particularly deleterious effect upon both the deterrent and rehabilitative functions of the criminal justice systems. [Citations omitted.]

STATEMENT OF PURPOSE

The issues presented in this Petition go to the very bedrock of the federal judiciary's ability to effectively function in light of the liberality with which it has chosen to read *pro se* inmate lawsuits, and the plethora of new and diverse constitutional rights given to state inmates in recent years.

Mr. White requests that this Court issue an opinion stopping Mr. Green, and all of his ilk, who maliciously burden the federal judiciary with vexatious and harassive lawsuits against prison administrators. Chief Judge Gibson in his dissent to the Eighth Circuit's denial of Mr. White's Petition for Rehearing succinctly set forth the problem:

> The actions of Clovis Carl Green, Jr., epitomize the worst fears of prisoner abuse of the judicial system. Inmate Green has filed over five hundred cases on his own behalf, and uncountable others under the names of other inmates. His history of engaging in gross abuse of judicial process is amply set forth in Judge Hunter's opinion in Green v. Camper [citation omitted.] The case at bar presents a small illustration of Green's use of the judicial process and must be viewed in the context of his bad faith efforts to harass public officials and deluge the courts with frivolous or malicious proceedings.

Mr. White believes that he has established that Clovis Carl Green, Jr., a caucasian male incarcerated in the Missouri penal system since 1975, is the nation's leading litigator. It is Mr. White's understanding that no one has filed more lawsuits in this Court than Mr. Green.

Mr. White has been sued innumerable times by Mr. Green, at least three times previously in regard to the identical issue raised in the instant lawsuit. Until recently Mr. Green's only stay at the Moberly prison was for six weeks in the spring of 1976. Nevertheless, a myriad of lawsuits have sprung from the typewriter of Mr. Green in regard to this short stay. Mr. White believes it is now time that the burden be placed where it belongs—on the shoulders of Mr. Green to establish that he has not previously filed similar lawsuits which were decided adversely to him, with prejudice. Mr. Green is a capable and skilled litigator who knows exactly what he is doing; Mr. Green is a man of intelligence and does not define his classes in a class action lawsuit without knowing exactly what he is doing. Mr. Green also knows that the huge number of suits he has filed make it virtually impossible to keep track of them all and that an adverse decision with prejudice may not be recalled years later when Mr. Green again files suit on the same cause of action. Mr. White requests that this Court reverse the Eighth Circuit decision and affirm the dismissal of this lawsuit. It is also requested that this Court apply more lawyer-like rules of construction to those inmate litigators with lawyer-like skills, and tremendous litigation experience, who file lawsuits more for harassment and entertainment than because they have meritorious complaints.

ARGUMENT

I

Is This a Class Action?

As has been detailed previously Mr. Green initiated this lawsuit pursuant to 42 U.S.C. § 1983 and denominated it a class action. A perusal of the Complaint will establish that part of the relief requested by Mr. Green was certification of the lawsuit as a class action. In this regard the Eighth Circuit said:

> Because the complaint was dismissed as frivolous, the District Court did not rule on the issue of certification as a class action. We note, however, that Green is not a member of the class he seeks to represent. In his complaint, Green requested certification of a class of 'all church members now at the Moberly prison.' Green is now and was at the time this action was filed incarcerated at Missouri State Penitentiary in Jefferson City, Missouri. He was confined at Moberly only briefly between March 9, 1976, and April 15, 1976. Green cannot, therefore, maintain this action as a class action on behalf of inmate church members presently confined at Moberly.

Nevertheless, the Eighth Circuit assumed that the Complaint contained individual claims relating solely to Mr. Green. The instant issue is: does the Complaint contain such claims?

Nowhere in Mr. Green's Complaint does he state that only *his* so-called religious rights were violated or infringed upon while *he* was incarcerated at Moberly. In the Complaint it is asserted that Mr. White refused to allow the growing of long hair and beards; however, it

is never asserted that this claim was raised by Mr. Green while *he* was incarcerated at Moberly or that Mr. White refused such a request from *him* during that period of time.

Similarly, in regard to the distribution of a so-called newsletter, it is never stated at what time it was requested that it be distributed. It is never posited that Mr. Green personally requested, on behalf of his so-called "church," that a so-called newsletter be distributed during *his* tenure at Moberly.

The only statement regarding Mr. Green himself, in the pleading, is that "The defendant refuses to allow the plaintiff to return to the Moberly prison upon his release, at full salary, as a minister of his church, denying freedom of religion." The dismissal of this claim by Judge Nangle was affirmed by the Eighth Circuit because of its frivolous nature. Consequently, the only parts of the pleading remaining to be reviewed relate to *others immured at Moberly*—axiomatically this does not include Mr. Green himself.

The Eighth Circuit concluded without so much as a word in support that Mr. Green raised individual claims concerning violations of *his* religious rights while *he* was incarcerated at Moberly. Yet, as established, there is nothing in the record to support such a conclusion and the Eighth Circuit has not elucidated what source it drew upon in making such a finding. The Eighth Circuit ignored that rule of law stating that notice pleading does not exist in a § 1983 lawsuit. Indeed, plaintiffs must plead their case with specificity alleging detailed facts in support of their contentions. See, *Ellingburg v. King,* 490 F.2d 1270 (8th Cir. 1974); *Bergman v. Stein,* 404 F.Supp. 287 (S.D. N.Y. 1975); and, *Blackburn v. Fisk University,* 443 F.2d 121 (6th Cir. 1971). The only detailed facts in

Mr. Green's Complaint concern a class action. Mr. White posits that the Complaint at issue can be construed only as a class action initiated by Mr. Green on behalf of others and not solely in his own behalf. That the Eighth Circuit failed to come to this conclusion is, in Mr. White's opinion, ". . . so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this court's power of supervision." United States Supreme Court Rule 19(b).

II

Is This Suit Barred by Res Judicata?

Even assuming, *ad arguendo,* that Mr. Green's Complaint contains individual claims, it is barred by the doctrine of *res judicata.* Mr. White vigorously argued in the Eighth Circuit that Mr. Green had litigated the precise issue in the instant case several times previously and had it ruled against him adversely, with prejudice. A full recapitulation of that argument is unnecessary here since Mr. White's brief, containing that argument, is in the record requested certified and transferred to this Court from the Eighth Circuit. Stated succinctly, Mr. White believes that the Eighth Circuit erred by failing to conclude that a previous case filed by Mr. Green, *Green v. White,* 589 F.2d 378 (8th Cir. 1970), did not act as a previous adjudication of this issue. Mr. White argued that the case culminating in 589 F.2d 378 had issues in it identical to those in the instant suit. In this regard the Eighth Circuit stated:

> Defendant White asserts that Green's individual claims are barred by res judicata. White contends that our decision in Green v. White, 589 F.2d 378 (8th Cir. 1979), precludes litigation of his present claims. In that case, the District Court entered a summary judgment ruling that Green's transfer back to Jefferson City in April, 1976, was clearly for reasons unrelated to his religious beliefs or practice. This Court affirmed. Green's present specific allegations were neither raised nor considered by either court in that case. Therefore, that decision does not preclude litigation of Green's present claims.

However, in dissent, Chief Judge Gibson stated:

> Green has previously sued White in his capacity as superintendent of the Missouri Training Center for Men for allegedly violating Green's freedom of religion during his brief stay in the Moberly prison between March 9 and April 15, 1976. This litigation, which culminated in our decision reported at 589 F.2d 378 (8th Cir. 1979), should foreclose him, by virtue of the doctrine of res judicata from now seeking relief.

That the majority erred by failing to recognize that the instant case is barred by the doctrine of *res judicata* is established by a perusal of the Complaint filed by Mr. Green in 589 F.2d 378. A true and correct copy of that Complaint is included in this Petition and will be found at Appendix F.

On July 19, 1978, Mr. Green filed in the United States District Court for the Eastern District of Missouri a lawsuit against Mr. White under the aegis of 42 U.S.C. § 1983 in which Mr. Green requested one million dollars for the violation of his federal constitutional rights. In Claim Three of that Complaint, which culminated in 589 F.2d 378, Mr. Green alleged:

> During the time that the Plaintiff was in the Moberly prison, the Defendant suppressed the freedom of religion of the Plaintiff and other inmate church

members, and denied the practice of said religion in any manner, violating the First Amendment.

In his "Argument of Law" in the July 19, 1978, Complaint Mr. Green stated:

> Thus, it is unconstitutional for the Defendant to suppress and deny the freedom of religion of the Plaintiff while he was at Moberly prison, and it is unconstitutional for the Defendant to transfer the Plaintiff to Missouri State Penitentiary due to the religious practices of the Plaintiff.

In his "Relief Requested" section Mr. Green requested one million dollars from Mr. White ". . . for the violation of the constitutional rights of the Plaintiff."

Clearly, in July, 1978, Mr. Green sought one million dollars from Mr. White claiming that while the former was at Moberly the latter violated his federal constitutional right to practice his so-called religion. Obviously, the identical claim is the subject of this lawsuit. Why the Eighth Circuit was not able to ascertain that Judge Meredith's dismissal of the July, 1978, Complaint, with prejudice,[3] which dismissal was affirmed by the Eighth Circuit at 589 F.2d 378, bars the instant action by virtue of *res judicata* is difficult to understand.

On January 16, 1979, Mr. Green filed a "Motion for Rehearing En Banc" in 589 F.2d 378[4] wherein it is stated on page 3 at paragraph 6:

> This court did not rule on the issue of the violation of the freedom of religion during the time that

3. See, for a true and photostatic copy of that "Judgment," Appendix G.

4. A true and correct photostatic copy of this Motion will be found in Appendix H accompanying this Petition.

> the Appellant spent at Moberly under the Human Awareness Universal Life Church.

Mr. Green also filed an additional "Motion for Rehearing En Banc" on January 11, 1979,[5] in which he stated at page 2, paragraph 3:

> *The appellant presented the claims that the appellee violated the freedom of religion of appellant during the time that he was at Moberly prison,* which is a meritorious issue under *Green v. Wyrick*, 545 F.2d 1099 (8th Cir. 1976). This Court ignored ruling on this issue in its Court ruling in this case, with no explanation. The Appellant cannot appeal to the U.S. Supreme Court on this issue if this Court does not issue a ruling on that claim, denying access to the courts. [Emphasis added.]

Unequivocally, by Mr. Green's own admissions, he did present to the Eighth Circuit, and to the District Court, in a case culminating in 589 F.2d 378, the contention that during his stay at Moberly from March to April, 1976, Mr. White infringed his First Amendment right to practice his so-called religion.

In *Southern Pacific Railroad Co. v. United States*, 168 U.S. 1, 48-49, 18 S.Ct. 18, 27, 42 L.Ed. 355 (1897), this Court stated in regard to the doctrine of *res judicata*:

> The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground for recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and, even if the second suit is for a different

5. A true and correct photostatic copy of this Motion will be found at Appendix I which accompanies this Petition.

cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.

It is irrelevant that in the instant action Mr. Green has added to his theory of recovery the specific allegations that he was denied the right to grow long hair and a beard and, in addition thereto, the right to distribute his so-called newsletter. *Hall v. Tower Land and Investment Co.*, 512 F.2d 41 (5th Cir. 1975); *Carr v. United States*, 507 F.2d 191, 193-194 (5th Cir. 1975); *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Co.*, 383 F.2d 225, 227 (D.C. Cir. 1967). As stated by the Court in *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Co.*:

> It is a well-settled and virtually axiomatic rule of sound judicial administration that a party having several alternative grounds for relief arising out a particular transaction does not have the privilege of litigating his theories one at a time, holding one in reserve while he presses another to judgment. According to the complementary principles of bar and merger whether a party loses or wins relief in his initial action, the judgment embodies all his rights stemming from the transaction involved, and he is foreclosed from later seeking relief on the basis of issues he might have raised in the prior proceeding to support his original claim.

The identical parties are before this Court in the instant lawsuit. The cause of action is identical except for Mr. Green's more specific allegations in regard to Mr. White's alleged denial of certain religious practices by Mr. Green while he was incarcerated at Moberly. The Eighth Circuit had before it, in the lawsuit culminating in 589 F.2d 378, issues identical in nature to those now before this

Court; consequently, that previous adverse decision bars Mr. Green from litigating this issue anew. As stated by this Court in *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898 (1948):

> The general rule of *res judicata* applies to repetitious suits involving the same cause of action. It rests upon considerations of economy of judicial time and public policy favoring the establishment of certainty in legal relations. The rule provides that when a court of competent jurisdiction has entered a final judgment upon the merits of a cause of action the parties of the suit and their privies are thereafter bound 'not only as to every matter which was offered and received to sustain or defeat the claim or demand but as to any other admissible matter which might have been offered for that purpose.' The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment.

Unequivocally Mr. Green has previously litigated whether Mr. White violated the former's constitutional rights by treating him discriminatorially because of his so-called religion while he was immured at Moberly. Despite obvious and abundant case law to the contrary the Eighth Circuit has allowed Mr. Green to drag Mr. White once again into court and allege that the latter violated his so-called religious freedom and rights. The cause of action is the same and the identical parties are involved. Nevertheless, the Eighth Circuit has chosen to ignore the similarities between the instant lawsuit and previous lawsuits decided adversely to Mr. Green, with prejudice. It is time that Mr. White's own rights be vindicated and that he be spared once again being brought into court

by Mr. Green; thus, he requests that the Writ issue because the Eighth Circuit's Opinion, in this regard, is so far from the mainstream of judicial proceedings, and such a departure from previous law, that this Court should exercise its power of supervision. Surely, previous sections of this Petition have established that the instant lawsuit is maliciously motivated. This case does not involve an average inmate litigant. Mr. White's *res judicata* argument should be viewed liberally in light of Mr. Green's substantiated abuse of the judiciary. This is the third time Mr. Green has brought Mr. White into court claiming that the latter violated his constitutional rights because of religious discrimination. Mr. White respectfully requests that this Court view the instant lawsuit in light of the Mr. Green delineated by the Honorable Elmo B. Hunter in *Green v. Camper, supra.*

III

Has Mr. White's Seventh Amendment Right to a Jury Trial Been Violated?

In its July 13, 1979, Opinion the Eighth Circuit remanded this case for an *evidentiary hearing.* Mr. White in his Motion for Rehearing filed on July 30, 1979, noted, in this regard, as follows:

> Once again, this Court has violated [Mr. White's] federal constitutional rights by remanding the case for an evidentiary hearing. Regardless of how circumscribed the inquiry may be at that evidentiary hearing, it is wholly inapplicable. As noted above there is no place for an evidentiary hearing in a § 1983 lawsuit, especially where as here [Mr. Green] himself has already requested a jury trial. What this Court intended by remanding, a second time, for an evidentiary hearing is once again beyond [Mr. White's]

> ken. Will discovery be available to [Mr. White]? Will he be able to depose [Mr. Green] before the evidentiary hearing occurs? If [Mr. White] requests, indeed demands, a jury trial, will Judge Nangle be circumscribed by this Court's Opinion and consequently forced to refuse such a request? [Mr. White] is in need of enlightenment as to exactly what function this Court intends an evidentiary hearing to serve. Stated laconically, it is [Mr. White's] opinion that this Court has issued an illegal order by remanding for an evidentiary hearing.

In his dissent Chief Judge Gibson also questioned the majority's remand for an evidentiary hearing:

> Furthermore, the propriety of remanding for an evidentiary hearing is questionable in view of Green's request for a jury trial. The scope and purpose of the hearing are unclear and it stands in an unusual procedural posture. Since no equitable relief is at stake in the proceeding, an evidentiary hearing on the ultimate issue in dispute may conflict with the right to a jury trial.

As noted, Mr. Green has already requested a jury trial. As detailed in the chronological procedural history of this case Mr. White has never had the opportunity to appear in District Court. This case was dismissed by Judge Nangle on his own motion and an opinion rendered on the merits by the Eighth Circuit before Mr. White was even aware that this lawsuit existed. Should Judge Nangle's dismissal be reversed and this case remanded, counsel for Mr. White states that he will request a jury trial. Of course, there is no longer any question but that either a plaintiff or defendant in a § 1983 lawsuit has a Seventh Amendment right to request and have a jury trial. *Ford v. Brier*, 71 F.R.D. 195, 197 (E.D. Wis. 1976);

Cook v. Cox, 357 F.Supp. 120 (E.D. Va. 1973); *Burch v. Carmody,* 377 F.Supp. 1157, 1158 (E.D. N.Y. 1974); *Richards v. Smoltich,* 359 F.Supp. 9 (N.D. Ill. 1973); see also, *Curtis v. Loether,* 415 U.S. 189, 94 S.Ct. 1005, 39 L.Ed.2d 260 (1974). Of interest is the Eighth Circuit's decision in *Drone v. Hutto,* 565 F.2d 543 (8th Cir. 1977), where that Court assumed, without any discussion, that plaintiffs are entitled to jury trials in § 1983 actions.

Unquestionably, the Eighth Circuit has erred in directing that this case be remanded for an evidentiary hearing. Both Mr. Green and Mr. White want to have this case tried to a jury, if it is to be tried at all. The Eighth Circuit cannot take that right away from either party, although it has chosen to attempt to do so.

An additional inherent difficulty with the Eighth Circuit's remand for an evidentiary hearing is that it forecloses Mr. White from raising other procedural defenses to the lawsuit. It must be remembered that this case was in the Eighth Circuit before Mr. White was aware of its existence. Consequently, he has not filed anything in the District Court as of yet. Nevertheless, the Eighth Circuit's remand seems to foreclose any opportunity for Mr. White to file an answer raising affirmative defenses. It would seem that the Eighth Circuit has ordered that this case go directly to an evidentiary hearing on the merits of those claims the Eighth Circuit found stated a cause of action. Mr. White believes that such an order violates his right to present affirmative defenses to the lawsuit. If this case is to be remanded, then Mr. White wants the opportunity not only to file an answer but to raise the affirmative defense of good faith immunity. Surely, Mr. White as a high prison official has a qualified immunity from liability. *Prosunier v. Navarette,* ..... U.S. ....., 98 S.Ct. 855 (1978). Mr. White must be given the

opportunity to plead that he acted in good faith by denying Mr. Green, assuming he did deny Mr. Green personally, the right to grow long hair and a beard and distribute a newsletter. Mr. White posits that if he personally denied Mr. Green the right to engage in such activities, and it was unconstitutional to do so, he acted in good faith under the belief that Mr. Green was urging the practice of tenets in a bogus religion and that those activities, if allowed to flourish, would have unreasonably endangered the security of the penal institution.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted and the judgment and decision of the Eighth Circuit reversed.

Respectfully submittted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1891

Clovis Carl Green, Jr., on Behalf of Himself and All Other Members of the Human Awareness Universal Life Church Incarcerated at the Missouri Training Center for Men at Moberly, Missouri,
Plaintiffs,

v.

Carl White, Superintendent, Missouri Training Center for Men, Moberly, Missouri,
Defendant.

On Motion for Court Order Directing District Court to Hold Jury Trial.
Submitted: July 2, 1979
Filed: July 13, 1979

Before HEANEY, STEPHENSON and HENLEY, Circuit Judges.

HEANEY, Circuit Judge.

Plaintiff Clovis Carl Green brought this action *pro se* on behalf of himself and all other members of the Human Awareness Universal Life Church incarcerated at the Missouri Training Center for Men at Moberly, Missouri. The action was predicated on 42 U.S.C. §1983 (1976) and alleged that defendant White, Superintendent at Moberly, denied plaintiffs their right to exercise their religious

beliefs. The following specific violations were alleged: church members were denied permission to conduct worship services, bible study classes, and other religious activities, and were denied the right to wear long hair and beards, to engage in conjugal visits, to hold banquets on religious holidays and to distribute the church newspaper *Truth,* to inmates. Green also claimed that plaintiffs' rights were violated by the refusal of the defendant to appoint Green as a full-time paid chaplain. The District Court, on its own motion, dismissed the complaint as frivolous and denied Green's motion for leave to appeal in forma pauperis.

Thereafter, in an amended and unpublished order, this Court granted Green leave to appeal in forma pauperis with respect to three issues only: (1) the alleged denial of his right to participate in church worship services and bible study classes; (2) the alleged denial of his right to wear long hair and a beard as an incident of the exercise of his religion; and (3) the alleged denial of his right to distribute the religious literature of his church. Accordingly, only these issues are presently before the Court.

Because the complaint was dismissed as frivolous, the District Court did not rule on the issue of certification as a class action. We note, however, that Green is not a member of the class he seeks to represent. In his complaint, Green requested certification of a class of "all church members now at the Moberly prison." Green is now and was at the time this action was filed incarcerated at Missouri State Penitentiary in Jefferson City, Missouri. He was confined at Moberly only briefly between March 9, 1976, and April 15, 1976. Green cannot, therefore, maintain this action as a class action on behalf of inmate church members presently confined at Moberly.

Defendant White asserts that Green's individual claims are barred by res judicata.[1] White contends that our decision in *Green v. White,* 589 F.2d 378 (8th Cir. 1979), precludes litigation of his present claims. In that case, the District Court entered a summary judgment ruling that Green's transfer back to Jefferson City in April, 1976, was clearly for reasons unrelated to his religious beliefs or practice. This Court affirmed. Green's present specific allegations were neither raised nor considered by either court in that case. Therefore, that decision does not preclude litigation of Green's present claims.

As noted in our prior order, similar claims of denial of religious freedom were also raised by Green in *Green v. White,* 545 F.2d 1099 (8th Cir. 1976). This Court remanded that case for an evidentiary hearing on Green's claims that defendant denied him his right to practice his religious beliefs. The case was, however, dismissed without prejudice after Green was denied leave to proceed in forma pauperis. It, therefore, does not bar Green's present claims.

The District Court properly ruled that certain of Green's claims were frivolous. However, the three claims on which Green was allowed to proceed on this appeal are not on their faces frivolous. It appears to the Court that Green has never had an opportunity to litigate these claims. We, therefore, remand to the District Court for an evidentiary hearing. The inquiry shall be strictly limited to whether defendant White, during the brief period

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1. The District Court dismissed this action before the defendant had the opportunity to file any responsive pleadings. Under these circumstances, we deem it appropriate to consider this defense even though it was not raised in the District Court.

in 1976 that Green was incarcerated at Moberly,[2] prevented Green personally from participating in church worship services and bible study classes, from wearing long hair and a beard as an incident of the exercise of his religion, or from distributing the religious literature of his church and, if so, whether Green's civil rights were thereby violated.

Green has filed a motion requesting that this Court order the District Court to hold a jury trial in this case. Such a request should be directed to the District Court in the first instance. The motion is denied.

Affirmed in part, reversed in part, and remanded.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

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2. The Court is cognizant that Green has in the past filed numerous suits alleging similar violations of his religious freedom by officials at the penitentiary in Jefferson City and that some such suits were dismissed with prejudice pursuant to a settlement agreement entered into on June 16, 1978, between Green and penitentiary officials. That agreement, and Green's allegations concerning violations of religious rights at Jefferson City, are the subject of continuing litigation in the United States District Court for the Western District of Missouri. We, therefore, reiterate that the present action concerns only alleged violations of Green's rights of religious freedom during his brief incarceration at Moberly.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1979

78-1891

Clovis Carl Green, Jr.,
Appellant,

vs.

Carl White,
Appellee.

Appeal from the United States District Court for the
Eastern District of Missouri

The Court having considered petition for rehearing en banc filed by appellant pro se and, being fully advised in the premises it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

September 19, 1979

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1979

78-1891

Clovis Carl Green, Jr.,
Appellant,

vs.

Carl White,
Appellee.

Appeal from the United States District Court for the Eastern District of Missouri

The Court having considered petition for rehearing en banc filed by counsel for appellee and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Chief Judge Gibson and Judge Ross would grant the petition of appellee for rehearing en banc. Attached hereto is a statement in dissent by Chief Judge Gibson.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

September 19, 1979

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1891

Clovis Carl Green, Jr.,
Appellant,

v.

Carl White,
Appellee.

On Petition for Rehearing

DISSENT TO THE DENIAL OF THE PETITION FOR REHEARING

FILED: September 19, 1979

GIBSON, Chief Judge.

This case inspires fearful anxiety over the ability of the federal courts to protect themselves from abuse by prisoner filings. Concern for the inordinate amount of judicial resources expended to cope with the deluge of prisoner filings in the federal courts has mounted in recent years. As stated by Mr. Justice Powell, concurring in the judgment in *Rose v. Mitchell,* No. 77-1701, slip op. at 6 (U.S. Sup. Ct. filed July 2, 1979): "It is common knowledge that prisoner actions occupy a disproportionate amount of the time and energies of the federal judiciary."

The actions of Clovis Carl Green, Jr. epitomize the worst fears of prisoner abuse of the judicial system. Inmate Green has filed over 500 cases on his own behalf, and uncountable others under the names of other inmates. His history of engaging in gross abuse of judicial process is amply set forth in Judge Hunter's opinion in *Green v. Camper,* No. 79-4055-CV-C, (W.D. Mo., filed August

16, 1979). The case at bar presents a small illustration of Green's use of judicial process, and must be viewed in the context of his bad faith efforts to harass public officials and deluge the courts with frivolous or malicious proceedings.

Green has previously sued White in his capacity as superintendent of the Missouri Training Center for Men for allegedly violating Green's freedom of religion during his brief stay in the Moberly prison between March 9 and April 15, 1976. This litigation, which culminated in our decision reported at 589 F.2d 378 (8th Cir. 1979), should foreclose him, by virtue of the doctrine of res judicata, from now seeking relief. Furthermore, the propriety of remanding for an evidentiary hearing is questionable in view of Green's request for a jury trial. The scope and purpose of the hearing are unclear and it stands in an unusual procedural posture. Since no equitable relief is at stake in the proceeding, an evidentiary hearing on the ultimate issue in dispute may conflict with the right to a jury trial.

Green's frivolous and often scurrilous filings have consumed vast quantities of judicial resources, placing additional burdens on the public purse, and we should not provide him with an opportunity further to indulge himself in this fashion.

For these reasons I dissent from the denial of the petition for rehearing, with suggestion that the case be reheard en banc.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 78-1144 C (3)

CLOVIS CARL GREEN, JR., et al.,
Plaintiffs,

vs.

CARL WHITE, etc.,
Defendant.

ORDER

(Filed October 26, 1978)

Pursuant to the memorandum filed this date,

IT IS HEREBY ORDERED that this cause be, and is dismissed.

/s/ JOHN F. NANGLE
United States District Judge

Dated: October 26, 1978.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 78-1144 C (3)

CLOVIS CARL GREEN, JR., et al.,
Plaintiffs,

vs.

CARL WHITE, etc.,
Defendant.

MEMORANDUM

(Filed October 26, 1978)

This matter is before the Court upon the Court's own motion to consider whether this cause should be dismissed as frivolous. 28 U.S.C. §1915(d).

Plaintiff filed this suit pro se on behalf of himself and other inmate members of his church, seeking $1,000,000.00 in damages. Plaintiff alleges that he is a minister with the Human Awareness Universal Life Church. In 1976, plaintiff was a prisoner at the Moberly prison where he was unable to exercise his religious beliefs. Plaintiff alleges that the church believes in long hair and beards, conjugal visits and banquets on religious holidays. Plaintiff alleges that defendant, superintendent of the Missouri Training Center for Men at Moberly, Missouri, refused to appoint plaintiff as a full-time paid chaplain and refuses to allow plaintiff to return to the institution, upon release, at a full salary as minister of the church. Plaintiff alleges in addition that defendant has refused to allow distribution of the church's newspapers.

It is the Court's conclusion that this complaint is frivolous as a matter of law and must be dismissed. *Cf., Brooks v. Wainwright,* 428 F.2d 652 (5th Cir. 1970); *Polakoff v. Henderson,* 370 F.Supp. 690 (N.D.Ga. 1973).

/s/ JOHN F. NANGLE
United States District Judge

Dated: October 26, 1978.

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI

CASE NO. 78-1144-C(3)

CLOVIS CARL GREEN, JR., REG. NO. 27914, MISSOURI STATE PENITENTIARY, JEFFERSON CITY, MISSOURI, ON BEHALF OF HIMSELF AND ALL OTHER INMATES SIMILARLY SITUATED,
Plaintiffs

vs.

CARL WHITE, SUPERINTENDENT MISSOURI TRAINING CENTER FOR MEN
MOBERLY, MISSOURI
Defendants.

CIVIL RIGHTS COMPLAINT AS A CLASS ACTION

COMES NOW THE PLAINTIFF PRO SE, CLOVIS CARL GREEN, JR., on behalf of himself and all other inmate members of his church, and prays that this Court will award money damages of $1,000,000 (One Million Dollars) to the Plaintiff for the violation of the freedom of religion of the Plaintiff, and grant declaratory and injunctive relief for the protection of the constitutional rights of all church members therein. In support of such relief, the Plaintiff states the following:

JURISDICTION

The jurisdiction of this court is invoked under the U.S. Statutes, the U.S. Constitution, and 42 U.S.C. section 1983 as a class action suit.

CLAIMS

1.) The Plaintiff is a minister of God with the HUMAN AWARENESS UNIVERSAL LIFE CHURCH, which believes in God, Jesus Christ and the Holy Spirit, has a formal set of church doctrines and beliefs, had church government, and is a legitimate religion.

2.) In 1976, the Plaintiff was a prisoner at the Moberly prison under the Defendant.

3.) The Defendant refused to recognize said Church, did not allow the full and free exercise of the religious beliefs of the Church, and discriminated against said church in denying any worship services, bible study classes, or other activities.

4.) The Plaintiff found many members of his church wanting services, and in fact, was larger than the Protestant church services, but the Defendant refuses to appoint the Plaintiff as full-time paid chaplain then. This violates freedom of religion.

5.) The church believes in long hair as a gift of God, and beards. The Defendants refused to allow this worship service practice, violating freedom of religion.

6.) The church believes in conjugal visiting to sanctify the marriage before God. Conjugal visiting will not present any danger to the security of the prison and there is no compelling institutional reason to deny this required religious practice by church inmates.

7.) The church wishes to publish its church newspaper, TRUTH, to distribute to all inmates, but the Defendant denied this request.

8.) The Defendant refuses to allow the Plaintiff to return to the Moberly prison upon his release, at full

salary, as the minister of his church, denying freedom of religion.

9.) The church believes in banquets, at the expense of inmates, on religious holidays as a dietary rule. The Defendant denies this right, violating freedom of religion.

RELIEF

WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

1.) That this Court declare this suit is a class action suit on behalf of all church members now at the Moberly prison.

2.) That this Court declare that the HUMAN AWARENESS UNIVERSAL LIFE CHURCH is a legitimate religion under protection of the First Amendment.

3.) That this Court order the Defendant to allow the Plaintiff to hold worship services and other religious activities, at the salary of the defendant upon his release.

4.) That this court order the Defendant to allow church members to grow their hair and beards long under freedom of religion, and allow regular conjugal visiting.

5.) That this Court order the Defendant to allow church banquets on all religious holidays, at the expense of the church members of the prison.

6.) That this Court order the Defendant to publish and circulate the church newspaper, TRUTH, at the expense of the prison.

7.) That this Court order the Defendant to pay money damages of $1,000,000 (One Million Dollars) to the Plaintiff for the violation of his freedom of religion.

8.) That this Court grant any other relief deemed fair, just and proper.

Respectfully submitted,

/s/ Clovis Carl Green Jr.
Clovis Carl Green, Jr.

FORMA PAUPERIS AFFIDAVIT AND OATH

I, CLOVIS CARL GREEN, JR., do swear under oath that due to my poverty that I am unable to pay the costs of these proceedings or give securities thereof, that I have a meritorious action, and am entitled to relief from this court.

I, CLOVIS CARL GREEN, JR., do swear under oath that all statements herein are true and correct to the best of my knowledge and belief.

/s/ Clovis Carl Green Jr.
Clovis Carl Green, Jr.

STATE OF MISSOURI
COUNTY OF COLE

SUBSCRIBED AND SWORN TO BEFORE ME ON .....

/s/ (Illegible)
Notary Public

My Commission Expires: .....

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 79-4055-CV-C

CLOVIS CARL GREEN, JR.,
Plaintiff,

vs.

DONALD CAMPER, et al.,
Defendant.

MEMORANDUM AND ORDER

(Filed August 18, 1979)

On March 21, 1979, plaintiff, Clovis Carl Green, Jr., a Missouri state prisoner who is currently confined in the Missouri State Penitentiary at Jefferson City on a state conviction of forcible rape, provisionally filed in forma pauperis a complaint under the Civil Rights Act of 1871, 42 U.S.C. § 1983 and its corresponding jurisdictional statute, 28 U.S.C. § 1343(3), seeking equitable relief and damages in the sum of $1,000,000.00 for claimed violations of his federally protected rights including the alleged refusal of prison officials to recognize his claimed "religion", the "Human Awareness Universal Life Church". Named as parties were Donald W. Wyrick, Warden of the Missouri State Penitentiary, Donald Camper, Inmate Programs Supervisor of the penitentiary; Joseph Keene, Mailroom Supervisor of that institution and two other employees, Mr. Schank and Mr. Richards.

Foliowing the provisional filing of this case in forma pauperis, it was referred in ordinary course to Magistrate

Richard Ralston for processing in accordance with the provisions of 28 U.S.C. § 636; the Special Order of the Court en Banc of December 22, 1976, providing for such actions; and Local Rule 26 of the United States District Court for the Western District of Missouri.

Review of the complaint reveals that as his grounds for relief inmate Green in a very broad and conclusionary fashion asserts (1) that while in a protective unit of the penitentiary on March 9, 1979, he was given only three sheets of paper and two envelopes three times a week, thus denying him access to the courts;[1] (2) that he received a violation report for "out of bounds" in a kitchen area of the penitentiary which was not so marked with signs; (3) that the prison policy and practice on violation report disciplinary hearings "is unconstitutional because the Adjustment Board" . . . failed to give an adequate statement as to evidence relied on or reasons for the action taken against plaintiff inmate; rather than pointing out the essential facts upon which inferences were based, the Committee merely incorporated the violation report and the special investigator's report"; (4) that he was denied access to the courts because he "was denied the right to obtain and have [his] box of legal papers and law books. . . during the time that [he] was in protective custody in H-Hall during March, 1979"; (5) that he has been denied permission to conduct services of the "Human Awareness Universal Life Church" on Saturdays or to post notice of the same; and (6) he was ordered to shave his beard in violation of the "Human Awareness Universal Life Church".

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1. Inmate Green has been making this contention and the contention he lacks stamps for mailing pleadings, but the record shows he weekly files innumerable papers, suits, letters and other material to this and other courts.

In an objective and painstaking manner Magistrate Ralston fully discussed each of these contentions in his twenty-four page report and found them "frivolous" and "malicious" under § 1915(d) of 28 U.S.C. The undersigned Judge has carefully reviewed the entire case file and Judge Ralston's Report[1] and Recommendation and finds that it is correct. The Court further finds that (1) inmate Green's contentions are duplicative of other contentions he has made in other cases he has filed in the federal court; that (2) his claims are frivolous under 28 U.S.C. § 1915(d) for the same reasons the Magistrate found them to be frivolous; that (3) these claims of petitioner are malicious under 28 U.S.C. § 1915(d); and finally, (4) that this case is but another case in which Petitioner Green is attempting in total bad faith to so swamp the docket of the United States District Court, Western District of Missouri, with frivolous cases, maliciously brought as to cause the Court to be unable to administer and process its docket. Petitioner is of the apparent mind that by flooding the Court with litigation and rendering it unable to administer its docket because of the sheer volume of such frivolous and malicious filings he will cause the Court to order his release from custody.

The above statement concerning inmate Green's premeditated effort to prevent the Court from processing its docket is solidly supported by inmate Green's previous fiilngs and statements that he has made in his pleadings, letters and other documents.

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1. The Magistrate's Report details inmate Green's previous filings on these five alleged grounds. Suffice it to say, inmate Green has had his day in Court on all his allegations that are not so general as to be meaningless.

Inmate Green's Previous Filings
Totaling Over 500 Cases

Commencing in 1972 when he was incarcerated in the Federal Medical Center at Springfield, Missouri, to the date of July 1, 1979, inmate Green has filed the following cases.

From the United States District Court for the Western District of Missouri: *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 2877-1-S (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. U.S. Bureau of Prisons, et al.,* No. 3015-1-S-R (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. U.S. Attorney General, et al.,* No. 3027-1-S-R (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 3042-1-S-R (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 3069-S (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. A. R. Elland, et al.,* No. 3092-S (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-276-S (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-429-S (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-450-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-451-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-452-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-462-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 73-CV-499-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 73-CV-517-S (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 73-CV-518-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-520-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.,* No. 73-CV-521-S-WHB-R (W.D. Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,*

et al., No. 73-CV-523-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 73-CV-532-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. v. Dr. P. J. Ciccone,* No. 73-CV-536-S-WHB-R (W.D. Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-543-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 73-CV-581-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 73-CV-596-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 73-CV-622-S-WHB-R (W.D.Mo. 1973); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-4-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-7-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-10-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-16-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-17-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-22-S-WHB-R (W.D.Mo.); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-36-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-44-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-55-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-70-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-71-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-81-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-89-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. U. S. Attorney General, et al.*, No. 74-CV-98-S (W.D. Mo. 1974); *Clovis Carl Green, Jr. v. Honorable Dennis J. Stewart,* No. 74-CV-99-S (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-101-S-WHB-R

(W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-113-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-114-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-133-S-WHB-R (W.D. Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-138-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-140-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-CV-188-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-205-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-216-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-217-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 74-CV-241-S (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 74-257-S-WHB-R (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Norman Carlson, et al.*, No. 74-CV-228-S (W.D.Mo. 1974); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone, et al.*, No. 75-CV-182-S (W.D.Mo 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-157-C (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-165-C (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-186-C (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-187-C (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-189-C (W.D. Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, No. 76-CV-7-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Treasurer of the United States, et al.*, No. 76-CV-14-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 76-CV-30-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation,* No. 76-CV-31-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 76-CV-49-C (W.D.Mo. 1976);

Clovis Carl Green, Jr. v. Honorable Elmo B. Hunter, No. 76-CV-77-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 76-CV-81-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 76-CV-82-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 76-CV-95-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 76-CV-99-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. United States of America, et al.,* No. 76-CV-100-C (W.D. Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 76-CV-101-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edwards Haynes, et al.,* No. 76-CV-102-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 76-CV-103-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick, et al.,* No. 76-CV-120-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. State of Missouri,* No. 76-CV-122-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76-CV-129-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76-CV-133-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Reverend Garrot,* No. 76-CV-135-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76 CV-139-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76-CV-147-C (W.D. Mo. 1976); *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone,* No. 19880-1 (W.D.Mo. 1971); *Clovis Carl Green, Jr. v. Don Emerson, et al.,* No. 20562-4 (W.D.Mo. 1972); *Clovis Carl Green, Jr. v. Steve Collins,* No. 74-CV-222-W-2 (W.D. Mo. 1974); *Clovis Carl Green, Jr. v. U.S. Attorney General, et al.,* No. 75-CV-125-W-4 (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. State of Colorado,* No. 75-CV-144-W-4-R (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. James Bergfable, et al.,* No. 75-CV-157-W-4-R (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 75-CV-169-W-4-R (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* No. 75-CV-177-W-4-R (W.D.Mo. 1975);

Clovis Carl Green, Jr. v. State of Missouri, No. 75-CV-309-W-4-R (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-CV-498-W-4 (W.D.Mo. 1975); *Clovis Carl Green, Jr. v. Jack Bergfalk,* No. 75-CV-416-W-4 (W.D. Mo. 1975); *Clovis Carl Green, Jr. v. Carl White,* No. 76-CV-223-W-4 (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 76-CV-328-W-4 (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 158-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 173-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 180-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 183-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 186-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 206-C (W.D. Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* Civil Action No. 76 CV 205-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* Civil Action No. 77 4106 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Carl White, et al.,* Civil Action No. 77 4026 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* Civil Action No. 77 4306 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections, et al.,* Civil Action No. 77 4315 CV-C (W.D. Mo. 1977); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* Civil Action No. 78 4027 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4028 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4055 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* Civil Action No. 78 4056 CV-C (W.D. Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Division of Corrections,* Civil Action No. 78 4057 CV-C (W.D.Mo. 1978); *Clovis Carl Green v. Donald W. Wyrick,* Civil Ac-

tion No. 78 4058 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 78 0055 CV-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections,* Civil Action No. 78 4106 CV-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4107 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4148 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* Civil Action No. 4201 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald R. Jenkins, et al.,* Civil Action No. 78 4200 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Clerk, United States District Court for the Western District of Missouri, et al.,* Civil Action No. 78 4203 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Sgt. Dearixon, et al.,* Civil Action No. 78 4207 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 78 4216 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Lt. Durham, et al.,* Civil Action No. 78 4222 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Joseph Keene, et al.,* Civil Action No. 78 4223 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Jerry Archer, et al.,* Civil Action No. 78 4224 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Lt. Beckley, et al.,* Civil Action No. 78 4225 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Mr. Dawson, et al.,* Civil Action No. 78 4226 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Susan Stanton,* Civil Action No. 78 0737 CV-W-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* Civil Action No. 77 0076 CV-W-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. United States of America,* Civil Action No. 79 4005 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 79 4046 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Joseph Keenes,* Civil Action No. 79 4051 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Donald Camper, et al.,* Civil Action No. 79

4055 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Donald Jenkins, et al.,* Civil Action No. 79 4067 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. State of Missouri,* Civil Action No. 79 4068 CV-C (W.D.Mo.); *Clovis Carl Green v. The Honorable Elmo B. Hunter, et al.,* Civil Action No. 79 4069 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. The Circuit Court of Cole County, Missouri, et al.,* Civil Action No. 79 4078 CV-C (W.D.Mo.); *Clovis Carl Green, Jr. v. Otto Walters, et al.,* Civil Action No. 79 4079 CV-C (W.D.Mo.); and *Clovis Carl Green, Jr. v. Clerk, Western District of Missouri,* Civil Action No. 79 4143 CV-C (W.D.Mo.).

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No. 5-73-11 (D.Minn. 1973); *Clovis Carl Green v. Richard Swanstrom,* No. 5-73-11 (D.Minn. 1973); *Clovis Carl Green, Jr. v. R. L. Aaron,* No. 5-73-23 (D.Minn. 1973): *Clovis Carl Green, Jr. v. Richard Kleindeinst, et al.,* No. 5-73-43 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Richard Kleindeinst, et al.,* No. 5-73-68 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Richard Kleindeinst, et al* No. 5-73-75 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Elliot Richardson,* No. 5-73-99 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Elliot Richardson,* 5-73-100 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Elliot Richardson,* No. 5-73-101 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Elliot Richardson,* No. 5-73-105 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Norman Carlson, et al.,* No. 5-73-125 (D.Minn. 1975); *Clovis Carl Green, Jr. v. United States Parole Office,* No. 5-74-18 (D.Minn. 1975); *Clovis Carl Green, Jr. v. Honorable Miles Lord,* No. 5-74-1-M (D.Minn. 1974). Records relating to the twenty-second case were unavailable.

From the United States District Court for the Eastern District of Missouri: *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 75-914-C (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. State of Missouri,* No. 75-955 (E.D.Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 75-993 (E.D. Mo. 1975); *In re Green* (dismissed without assignment of docket number 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* 75-1165 (E.D.Mo. 1976); *In re Green* (dismissed without assignment of docket number 1976); *Clovis Carl Green, Jr. v. Carl White,* No. 76-299 (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. Carl White,* No. N-76-22 (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. Carl White* (dismissed without assignment of docket number 1976); *Clovis Carl Green, Jr. v. Dr. Harold Robb, et al.,* No. 76-421 (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.,* No. 76-425 (E.D.Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 76-452 (E.D.Mo. 1976); *Clovis*

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Hunter, No. 75-8062 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 75-8125 (8th Cir. 1975); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, No. 75-8147 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 75-8164 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter*, No. 75-8197 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 75-8211 (8th Cir. 1975); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 76-8055 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin*, No. 76-8069 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Treasurer of the United States Department of Treasury, et al.*, No. 76-8079 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 76-8090 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 76-8095 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, No. 78-8096 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin*, No. 76-8100 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 76-8101 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 76-1802 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.*, No. 76-1929 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin et al.*, No. 76-1940 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.*, No. 76-1941 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter*, No. 76-1942 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, No. 76-1943 (8th Cir. 1976); *In re: Clovis Carl Green, Jr.*, No. 78-1442 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.*, No. 78-1698 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Carl White*, No. 78-1714 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. John Regan, et al.*, Misc. No.

76-8114 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, Misc. No. 76-8126 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White*, Misc. No. 76-8133 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. William H. Becker, et al.*, Misc. No. 76-8135 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8140 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.*, Misc. No. 76-8147 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8148 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin*, Misc. No. 76-8156 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter*, Misc. No. 76-8164 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States, et al.*, Misc. No. 76-8175 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.*, Misc. No. 76-8176 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter*, Misc. No. 76-8177 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8184 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.*, Misc. No. 76-8185 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Haynes, et al.*, Misc. No. 76-8189 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8201 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8202 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8209 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8228 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Clerk, U.S. District Hunter, et al.*, Misc. No. 76-8228 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States, et al.*, Misc. No. 76-8229 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 76-8249 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.*, Misc. No. 76-8250 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick*, Misc. No. 76-8253 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.*, Misc.

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1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.*, Misc. No. 78-8204 (8th Cir. 1978); *In the Matter of: Green and Steven Dale Davis, Petitioners*, Misc. No. 78-8205 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8214 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8215 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 78-8216 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8217 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8219 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8221 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8222 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8225 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8228 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8229 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Carl White*, Misc. No. 8230 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, Misc. No. 78-8236 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8247 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8249 (8th Cir. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, Misc. No. 78-8259 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8001 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Donald Jenkins, et al.*, Misc. No. 79-8002 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8005 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Sgt. Dearixon, et al.*, Misc. No. 79-8010 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Lt. Durham, et al.*, Misc. No. 79-8011 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Joseph Keenes, et al.*, Misc. No. 79-8012 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Jerry Archer, et al.*, Misc. No. 79-8013 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Lt. Beckley, et al.*, Misc. No. 79-8014 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Donald Wyrick, et al.*, Misc. No. 79-8017 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8019 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8039 (8th Cir. 1979); *In re: Green, Petitioner*, Misc. No. 79-8040 (8th Cir. 1979); *Clovis Carl Green, Jr. v. Missouri Board of Probation and*

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From the Supreme Court of the United States: *Clovis Carl Green, Jr. v. United States*, No. 72-5880 (1972); *Clovis Carl Green, Jr. v. United States*, No. 73-5433 (1973); *Clovis Carl Green, Jr. v. Elmo B. Hunter, et al.*, No. 75-5421 (1975); *Clovis Carl Green, Jr. v. Elmo B. Hunter, et al.*, No. 76-5155 (1976); *Clovis Carl Green, Jr. v. H. Kenneth Wangelin, et al.*, No. 76-5195 (1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 76-5317 (1976); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, No. 77-6379 (1977); *Clovis Carl Green, Jr. v. Elmo B. Hunter*, No. 77-6362 (1977); *Clovis Carl Green, Jr. v. Elmo B. Hunter*, No. 77-6555 (1977); *Clovis Carl Green, Jr. v. Missouri Board of Probation & Parole*, No. 78-5407 (1978); and *Clovis Carl Green, Jr. v. Richard Ralston*, No. 78-5351 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 78-5699 (1979); *Clovis Carl Green, Jr. v. Clerk of United States District Court for the Western District of Missouri*, No. 78-5717 (1979); *Clovis Carl Green, Jr. v. Judge Elmo B. Hunter*, No. 78-5732 (1979); *Clovis Carl Green, Jr. v. Richard Ralston*, No. 78-5799 (1979); *In the Matter of the Alleged Contumacious Conduct of Clovis Carl Green, Jr.*, No. 78-5845 (1979); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 78-5848 (1979); *Clovis Carl Green, Jr. v. Carl White*, No. 78-6097 (1979); *Clovis Carl Green, Jr. v. Donald Wyrick*, No. 78-6278 (1979); *Clovis Carl Green, Jr. v. Russell G. Clark, et al.*, No. 78-6281 (1979); *Clovis Carl Green, Jr. v. Carl White*, No. 78-6311 (1979); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, No. 78-6327 (1979); *Clovis Carl Green, Jr. v. Richard Ralston, et al.*, No. 78-6359 (1979); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole*, No. 78-6360 (1979); *Clovis Carl Green,*

Jr. v. Hon. Elmo B. Hunter, et al., No. 78-6686 (1979); and *Clovis Carl Green, Jr., et al., v. Hon. Elmo B. Hunter, et al.*, No. 79-5053.

From the Circuit Court of Cole County, Missouri: *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 27879 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 27905 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 27919 (1975); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole*, No. 27970 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 27971 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden, et al.*, No. 28016 (1975); *Clovis Carl Green, Jr., on behalf of Linda Smithers, Barbara Davis, Juanita Vitalli, Kathy Webb and all other unknown women held at Missouri State Penitentiary v. Donald Wyrick, Warden*, No. 28045 (1975); *Clovis Carl Green, Jr. v. Edward Haynes*, No. 28063 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28117 (1975); *Clovis Carl Green, Jr. v. Edward Haynes*, No. 28079 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28137 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28139 (1975); *Clovis Carl Green, Jr. v. Donald M. Camper, et al.*, No. 28165 (1975); *Clovis Carl Green, Jr. v. Captain Manness, et al.*, No. 28175 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28176 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28177 (1975); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28248 (1976); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28249 (1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 28503 (1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.*, No. 28533 (1976); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden*, No. 28567 (1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 28677 (1976); *Clovis Carl Green v. Director, Division of*

Corrections, No. 28710 (1976); *Clovis Carl Green, Jr. v. Department of Probation and Parole*, No. 29133 (1977); *Clovis Carl Green, Jr. v. Department of Probation and Parole and Director, Division of Corrections*, No. 30184 (1978); *Clovis Carl Green, et al. v. Donald W. Wyrick*, No. 30214 (1978); *Clovis Carl Green, Jr., et al. v. Director, Division of Corrections, et al.*, No. 30270 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 30292 (1978); *Clovis Carl Green, Jr. v. Governor, et al.*, No. 30661 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole*, No. 30665 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole*, No. 30663 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 30665 (1978); *Clovis Carl Green, et al. v. Director, Division of Corrections, et al.*, No. 30685 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections*, No. 30614 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole*, No. 30615 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections*, No. 30634 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections, et al.*, No. 30894 (1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole, et al.*, CV179-133cc (1979); *Clovis Carl Green, Jr. v. Donald Jenkins, et al.*, No. CV179-515cc (1979); *Clovis Carl Green, Jr. v. Don Smith, et al.*, No. CV179-537cc (1979).

From the Circuit Court of Greene County, Missouri: *Clovis Carl Green, Jr. v. Dr. P. J. Ciccone*, No. 76248-4 (1976).

From the Circuit Court of Jackson County, Missouri: *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 75-2852 (1975); *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 76-0747 (1976); *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 78-2295 (1978); *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 78-2360 (1978); *Clovis Carl Green, Jr. v. State of Missouri*, No. CV 78-2510 (1978);

and *Clovis Carl Green, Jr. v. State of Missouri,* No. CV 78-2824 (1978); *Clovis Carl Green, Jr. v. State of Missouri,* CV 790865 (1979).

From the Missouri Court of Appeals, Kansas City District (now Western District): *Clovis Carl Green, Jr. v. State of Missouri,* No. KCD 27852 (Mo.App. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. KCD 27911 (Mo. App. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. KCD 27933 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Robert Frazer,* No. KCD 28130 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. Keith Bondurant,* No. KCD 28263 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28304 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick, et al.,* No. KCD 28305 (Mo. App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Moore,* No. KCD 28353 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 20380 (Mo.App. 1975); *Clovis Carl Green, Jr. v. James T. Riley,* No. KCD 28381 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. KCD 28385 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. KCD 28395 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28432 (Mo.App. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28452 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28541 (Mo.App. 1976); *Clovis Carl Green, Jr. v. State of Missouri,* No. KCD 28570 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Hon. James A. Moore,* No. KCD 28685 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. KCD 28713 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Judge Riley,* No. KCD 30604 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Henry R. Bratkowski,* No. 028769 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 028771 (Mo.App. 1976); *Clovis Carl Green, Jr. v.*

Edward Haynes, No. 028770 (Mo.App. 1976); *In Re Clovis Carl Green, Jr. v. Donald Wyrick,* No. 028854 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 028949 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 029110 (Mo.App. 1976); *Clovis Carl Green, Jr., et al. v. Donald W. Wyrick,* No. 30180 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 30359 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Honorable Byron Kinder and Hon. James T. Riley,* No. 30360 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation & Parole,* No. 30365 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Division of Corrections and Donald Wyrick,* No. 30373 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri and Donald Wyrick,* No. 30374 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30436 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30454 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30464 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 30474 (Mo.App. 1978); and *Clovis Carl Green, Jr. v. Cole County Circuit Court,* No. 30520 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 30782 (Mo.App. 1979); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 30813 (Mo. App. 1979); *Clovis Carl Green, Jr. v. Judge Riley,* No. 30604 (Mo.App. 1979); and *Clovis Carl Green, Jr. v. Judge Riley,* No. 30658 (Mo.App. 1979).

From the Missouri Supreme Court: *Clovis Carl Green, Jr. v. State of Missouri,* No. 59007 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 59018 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 59055 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* No. 59130 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 59207 (Mo. 1975); *Clovis Carl Green, Jr. v. Hon. James T.*

Riley, No. 59264 (Mo. 1975); *Clovis Carl Green, Jr., on behalf of Linda Smothers, et al. v. Hon. James T. Riley,* No. 59265 (Mo. 1975); *Clovis Carl Green, Jr. v. Hon. James T. Riley,* No. 59309 (Mo. 1975); *Clovis Carl Green, Jr. v. Donald Wyrick Warden,* No. 59315 (Mo. 1975); *Clovis Carl Green, Jr. v. State of Missouri,* No. 59340 (Mo. 1975); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 59432 (Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 59433 (Mo. 1976); *Clovis Carl Green, Jr. v. Hon. James T. Moore,* No. 59522 (Mo. 1976); *Clovis Carl Green, Jr. v. Dr. Henry R. Bratkowski,* No. 59558 (Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 59559 (Mo. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 59560 (Mo. 1976); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* No. 59600 (Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick, Warden,* No. 59681 (Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 59664 (Mo. 1976); *Clovis Carl Green, Jr. v. Director, Division of Corrections,* No. 60743 (1978); *Clovis Carl Green, Jr. v. Donald R. Jenkins, et al.,* No. 60923 (Mo. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* No. 60924 (Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 60325 (Mo. 1978); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections,* No. 60938 (Mo. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 20945 (Mo. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Cole County, Missouri,* No. 61061 (Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 61276 (1979); and *Clovis Carl Green, Jr. v. Circuit Court of Jackson County,* No. 61305 (1979).

Since July 1, 1979, inmate Green has filed additional cases, including the instant case, bringing his total filings to over five hundred cases. This he has done in spite of being enjoined November 1, 1976, from being a writ

writer for other inmates.[1] In Green v. Wyrick, 428 F. Supp. 732 (W.D. Mo. 1976) there is detailed a vignette of his writ writing activities demonstrating that such activities were not beneficial or productive to the other inmates. It was found that he simply used alleged complaints of other inmates and their names to advocate his own contentions and interests to the detriment of the other inmates. He was totally ineffective and unsuccessful in such representations. And finally inmate Green was declared to have "a continuing history of engaging in gross abuse of the judicial process which is impeding the ability of the Judiciary to carry out its proper functions."[2] See Green v. Wyrick, 428 F. Supp. 732 (W.D. Mo. 1976).

Inmate Green has not been content with the filing of hundreds of frivolous and malicious actions. In 1976 in Green v. Wyrick, (W.D. Mo.) 423 F. Supp. 732 at 736 it

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1. Even the injunction has not deterred inmate Green. His deliberate violation of that injunction by his numerous legal activities for other inmates has twice resulted in his conviction for criminal contempt of Court. See, In The Matter of the Alleged Contumacious Conduct of Clovis Carl Green, Jr., 586 F. 2d 1247 (8th Cir. 1978) and United States v. Clovis Carl Green, Jr., Criminal Action No. 79-04013-01-CR-W-4 (W.D. Mo. 1979).

2. It was there noted that this same type of willful abuse of the judicial process had also been carried out in the state courts. One Missouri State Court characterized inmate Green's activities as "a calculated abuse of process of the same or similar nature as that condemned by the federal district Court." Clovis Carl Green, Jr. v. State of Missouri, Civil Action No. 78-2824, Mo. Cir. Ct., 16th Jud. District, 8/25/78, unpublished opinion. The Eighth Circuit Court of Appeals was in agreement as to inmate Green's litigation activities, see, Green v. Wyrick, Misc. No. 76-8096 (8th Cir., June 3, 1976) and Green v. Garrott, Misc. No. 76-8184 (8th Cir. Nov. 2, 1976). And, see Green v. Garrott, 76 CV 100-C (E.D. Mo. August 25, 1976) in which Judge Wangelin entered an injunctive order against inmate Green, declaring: "As of this date Clovis Carl Green, Jr., has filed in excess of 200 lawsuits. All of these lawsuits have been frivolous . . . ." In Green v. Haynes, CV 102-C (W.D. Mo. 1976) Magistrate Stewart wrote, petitioner's repeated "filing of impertinent allegations constitutes an imminent threat to the administration of justice in this district, when judicial time and effort must be taken to evaluate them."

was noted: "First, despite the experience of having filed 'hundreds' of lawsuits, petitioner consistently and deliberately has failed to follow the proper procedures and rules for filing actions in this Court. Contrary to local rules requiring inmates to submit petitions on court-approved and court-provided forms, and Rule 8(a), Federal Rules of Civil Procedure, requiring a short and plain statement of the claim, petitioner continues to submit voluminous pro se pleadings containing conclusionary statements and long-winded recitations of irrelevant facts and allegations . . . Petitioner (has) the habit of sending ex parte motions and letters to the Court, without serving opposing counsel with a copy . . . Petitioner's pleadings frequently contain offensive, impertinent, and irrelevant comments, the nature of which twice has caused the Court to strike petitioner's pleadings as 'vile and scandalous'. Petitioner regularly ignores, refuses to answer or makes 'irrelevant' answers in response to questions or court provided forms concerning his financial status or previous history of litigation. . . . Petitioner frequently repeats allegations in several lawsuits and requests relief (therefor) in separate suits . . . ." Inmate Green continues these activities. His pleadings continue to be of such a nature as to make it unreasonably difficult, if not impossible, to process his case in an orderly fashion. Because of his long history of engaging in such tactics after repeated warnings by the Court, it is clear that he persists for the intentional purpose of making it difficult and time consuming to the Magistrate and to the Court to process his litigation.

As stated by the Magistrate in his present Report and Recommendation, "Aside from the sheer quantity of plaintiff's litigation, the quality of his claims also demonstrate the maliciousness of the legal actions which he has

initiated against prison officials, court personnel and judicial officers. For example, in the cases styled *Clovis Carl Green, Jr. v. Donald Wyrick, et al.*, Civil Action No. 77-4315 CV-C (W.D. Mo.), and *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole, et al.*, Civil Action No. 77-4306 CV-C (W.D. Mo.), plaintiff alleged that prison disciplinary actions had been and were continuing to be, initiated against him by prison officials, resulting in his confinement in segregated units in retaliation for his legal activities and for his attempts to proselytize on behalf of his newly-founded 'religion'. After a full three-day evidentiary hearing, at which petitioner was represented by able counsel, appointed by the Court, it was clearly evident that 'in each instance of disciplinary action shown . . ., petitioner [had] not been disciplined for his legal activities, but rather for clear violations of prison rules and regulations.' *Id.* (Unpublished Report and Recommendation of May 10, 1978). And a later evidentiary hearing set in those cases, the purpose of which was to adjudicate plaintiff's 'religious' claims, was aborted by his dismissal of those actions. Another evidentiary hearing, set in the cause styled *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 78,4216 CV-C (W.D. Mo.), to determine his claim that other inmates and prison supervisory personnel had physically abused him, was again dismissed by plaintiff on the morning of trial. And another evidentiary hearing, held on May 29, 1979, in the cause styled *Clovis Carl Green v. Missouri Board of Probation and Parole, et al.*, Civil Action No. 77-4306 CV-C (W.D. Mo.), upon his claim that prison officials had breached their settlement agreement by not allowing him to conduct 'church' meetings on Saturdays resulted in a judicial finding that his claim had absolutely no factual basis. Accordingly, his motion to 'reopen' the issues in that cause was denied. Thus, it is clear that, in virtually every

instance in which plaintiff's claims have appeared colorably valid on the face of his pleadings, an evidentiary probing of those claims has revealed total insubstantiality. See, *Green v. Wyrick,* 428 F. Supp. 732, *et al.,* Civil Action No. 76 CV 100-C (E.D. Mo. 1976).

"'[N]o one, rich or poor, is entitled to abuse the judicial process.' Hardwick v. Brinson, 523 F. 2d 798, 800 (5th Cir. 1975); Ex parte Tyler, 70 F.R.D. 456 (W.D. Mo. 1976). Accordingly, in light of plaintiff's history in this, and other courts, of initiating frivolous and malicious litigation against prison authorities, parole officials, court personnel, judicial officers, and other governmental officers, and his demonstrated abuse of the judicial process at public expense, involving extreme costs in terms of time and expense* on the part of state and federal judicial and executive personnel, and the public as a whole, this action should be characterized as 'malicious' and should be dismissed for that reason alone."

Additionally illustrative of inmate Green's intent to "swamp" the Court with frivolous actions are the following excerpts from some of his pleadings and letters: From inmate Green's July 23, 1979, Motion for a Jury Trial in the instant case, "Now the Prisoners' Law Collective has been formed under the sponsorship of the Human Awareness Universal Life Church.[1] The goal and aim of the P. L. C. . . . is to encourage inmates to file many

*The litigious activities of petitioner "have cost the government, in a conservative estimate, thousands of dollars . . .". *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 76 CV 100-C (W.D. Mo. 1976), (unpublished opinion of Judge Wangelin).

1. Inmate Green is the so-called founder of this "Church", and claims to be the only one who can speak for it or prepare its litigation. According to him, no one of its "members" can file any litigation without his consent. Other correspondence and pleadings of inmate Green make it clear that he is the "church".

court suits against the prison, parole board and State. This plaintiff (Green) will assist the inmates in the state courts, and other 'jail house attorneys' will prepare the court suits in this Western District of Missouri. Hopefully, the number of court suits will double in the next six months, then double again in the following six months. If possible, we would like to have 4 or 5 times as many court actions filed in the next years as has been filed in the past! At the present time, without the legal aid of this plaintiff, more than 100 inmate church members are preparing civil rights court suits to be filed in this Court very soon—and then each one will continue filing more courts suits very often . . . ."

Within the past several weeks in a "letter" to the Clerk of this Court inmate Green stated, "I would like to ask your office to mail 3 sets of court forms for civil rights complaints to each of the 77 inmates" (named). * * * "The reason that these inmates would need 3 sets of court form is that each inmate plans to prepare and then submit 3 civil rights complaints to this court for the violation of their constitutional rights by prison officers. The Council of Elders has decided that it is the duty of each inmate member of this Church to start filing civil rights complaints individually, and/or class actions, to bring judicial attack of the prison officials' violation of the constitutional rights of inmates." * * * "Each inmate plans to file about 3 separate civil rights complaints upon receipt of the court forms, and then file additional civil rights suits each month . . . ."

Inmate Green has not been content to personally and through "church" action advance his desire to prevent the federal court from being able to process its docket but has resorted to intimidation tactics as a part of that plan. In early May, 1979, the Court received a threatening letter from a source styling itself "American Revolu-

rionary Army". The letter threatened that women, children and many others would be killed if certain things were not done immediately by the Judges of this Court, including the giving of a pardon or parole to every state prisoner who has less than five years to serve on his sentence and a paid chaplain for Clovis Green's "church". Shortly, thereafter, inmate Green wrote three letters to the United States District Court, obviously on Green's claim of denial of access to the courts, stating, "They (certain inmates about to leave prison) feel the most effective method is by assassination and terrorism—bombing of public places, resulting in mass murder. I suggest you begin obeying the law and stop this illegal actions, or many deaths may occur. Sincerely, Clovis Carl Green, Jr." In another letter to the Clerk of this Court inmate Green stated, "Dear Sir, please do not ever return any motions to me in the future, because I will continue to mail them back to you every time. Please keep in mind if you return any documents you are denying access to the courts. Some friends of mine tell me that if this court continues to deny my access to the courts, upon their release from prison, they will use terrorism (mass murder by public bombing) to redress our grievances if the court refuses to allow access. So please do not return any documents or the lives of many people may be on your conscience. Sincerely, Clovis Carl Green, Jr." The third document, filed on May 15, 1979, in a motion titled "Motion for Trial" in *Green v. State of Missouri*, No. 79-4378 CV-C, stated in part: "The plaintiff [Green] submits that the dismissal of this cause will deny access to courts for redress of grievances. * * * The plaintiff [Green] has been told by other revolutionary extremist inmates (who believe in mass murder by public bombings to redress grievances) that in the event that this court rules to deny this case and thereby state that the court will not protect the constitutional rights of the plaintiff

[Green] and other inmates, then the only effective method to protect the rights of prisoners is by mass murder of large numbers of men, women and children by terrorist bombing in public places. Therefore, if this Court decides to rule—in effect—that this Court will not obey the law and protect the rights of prisoners, then the lives of large numbers of citizens will be on the conscience of this Court. Sincerely, Clovis Carl Green, Jr." Clearly, inmate Green has added illegal threats to his arsenal.

All of the above is reflective of but some of the nearly innumerable acts of inmate Green deliberately designed to totally frustrate the judicial process and to obtain his release from the State Penitentiary. Literally scores of other such acts of similar design could be added to this opinion but the above should suffice to make it clear that inmate Green not only has but continues to take almost daily actions intended to so abuse the judicial process as to make it impossible for the United States District Court, Western District of Missouri, to process its docket. As earlier indicated, inmate Green's activities have not been limited to this Court. Other courts, including the Eighth Circuit Court of Appeals and the United States Supreme Court, also have come within his orbit.

The Magistrate's Report and Recommendation that leave to proceed in forma pauperis be withdrawn and that this cause be dismissed as frivolous and malicious under the provisions of 28 U.S.C. § 1915 are approved. Leave to proceed in forma pauperis is withdrawn, and this cause is hereby dismissed with prejudice.

As stated in earlier opinions of this Court, unless the Courts of this nation are to be deemed to be powerless to stop such a flagrant abuse of the judicial process, one man will be able to preempt so much judicial time at the trial and appellate levels as to thwart the very ability of the judicial system to carry out its necessary judicial

function of properly processing its criminal and civil docket of cases filed by other litigants who may have meritorious matters.

Congress has authorized the federal courts to dismiss an action which presents issues which are insubstantial, either legally or factually. Jones v. Ault, 67 F.R.D. 124, 127 (S.D. Ga. 1973), affirmed 516 F. 2d 898 (5th Cir. 1975); Boston v. Stanton, 450 F. Supp. 1049 (W.D. Mo. 1978). And, in 28 U.S.C. § 1915(d) Congress has authorized the Courts to dismiss a prospective action whenever it is satisfied, in its discretion, that the proposed action is "frivolous or malicious."[1] See, O'Connell v. Mason, 132 F. 245, 247 (1st Cir. 1946); Duhart v. Carlson, 469 F. 2d 471, 478 (10th Cir. 1972) cert. den. 410 U.S. 958 (1973); Note, Petitioner to Sue In Forma Pauperis: Standards and Procedures for the Exercise of Judicial Discretion, 56 Boston L. Rev. 745, 746.

The Magistrate is directed that until further order of Court, in all pending actions and in all future actions filed by inmate Green in the United States District Court, Western District of Missouri, which are or may be referred to the Magistrate, the Magistrate is first to address the question as to whether or not the action appears to be in furtherance of inmate Green's bad faith efforts to deluge this Court with frivolous or malicious proceedings contrary to 28 U.S.C. § 1915, and, if so, without endeavoring to address the merits of any of the contentions, to recommend to the District Court that the cause be dismissed as either frivolous or malicious or both under the provisions of 28 U.S.C. § 1915.

IT IS SO ORDERED.

/s/ Elmo B. Hunter
United States District Judge

1. Where warranted contempt and criminal action for obstruction of justice may be available. 18 U.S.C. § 1503.

APPENDIX E

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 78 4222 CV-C

CLOVIS CARL GREEN, JR.,
Plaintiff,

v.

LT. DURHAM, et al.,
Defendant.

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE THAT THE CAUSE BE DISMISSED AS "MALICIOUS" UNDER THE PROVISIONS OF 28 U.S.C. § 1915(d)

(Filed November 15, 1978)

Plaintiff, a state prisoner at the Missouri State Penitentiary at Jefferson City, Missouri, and perhaps the most prolific "writ-writer" in the nation, has provisionally filed in forma pauperis a complaint under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343(3), seeking to litigate the validity of certain prison disciplinary proceedings which occurred more than two years ago. Named as parties defendant are Donald W. Wyrick, Warden of the penitentiary, and two prison correctional officers, Major Lewis and Lieutenant Durham. Plaintiff seeks declaratory judgment that the state statute under which prison authorities are authorized to impose is unconstitutional as "vauge," and damages in the amount of $1,000,000 for alleged violations of his federally-protected rights. Following the pro-

visional filing of this cause in forma pauperis, it was referred to the undersigned United States magistrate for processing in accordance with the provisions of 28 U.S.C. § 636; the Special Order of the Court *en banc* of December 22, 1976, providing for the reference of such actions; and Local Rule 26 of the United States District Court for the Western District of Missouri. This action is one of seven filed by plaintiff within a period of approximately one month.

While plaintiff has been granted provisional leave to proceed in forma pauperis,* it is clear that the cause should be dismissed under the provisions of 28 U.S.C. § 1915(d). Under the provisions of Section 1915(d), *supra,* the Court is authorized to dismiss a prospective action whenever it is satisfied, in its discretion, that the proposed action is "frivolous *or* malicious" (emphasis added). Noteworthy is the fact that Congress, in enacting subsection (d) of Section 1915, *supra,* set forth two standards; one creating a standard of "frivolity," and the other creating a standard of "maliciousness." By providing a standard of "frivolity," Congress clearly has authorized the federal courts to dismiss an action which presents issues that are insubstantial, either legally or factually. See, generally, Jones v. Bales, 58 F.R.D. 453, 463 (N.D.Ga. 1972), aff'd 480 F.2d 805 (5th Cir. 1973); Jones v. Ault, 67 F.R.D. 124, 127 (S.D.Ga. 1973), aff'd 516 F.2d 898 (5th Cir. 1975); Boston v. Stanton, 450 F.Supp. 1049 (W.D.Mo. 1978); State of Louisiana ex rel. Purkey v. Ciolino, 393 F.Supp. 102 (E.D.La. 1975); and Clark v. Zimmerman,

*It is the practice of this Court to provisionally file those actions in which leave to proceed in forma pauperis is requested, and then proceed to a determination of whether or not the applicant is eligible under Section 1915, *supra.* A determination of "frivolity" or "maliciousness" may then be made at any stage of the subsequent proceedings.

394 F.Supp. 1166 (M.D.Ga. 1975). "A determination as to frivolity is a legal determination as to whether there 'exists substantiality as to [a plaintiff's claim] of justiciable basis and of impressing reality'." Serna v. O'Donnell, 70 F.R.D. 618 (W.D.Mo. 1976), quoting Carey v. Settle, 251 F.2d 483 (8th Cir. 1965). But subsection (d) of Section 1915, *supra,* couched in the disjunctive, also empowers the Court to dismiss, in its discretion, an action which is "malicious." The purpose of this additional standard is to protect the courts, defendants, and other litigants against plaintiffs or petitioners motivated by malice. For, as stated in *O'Connell v. Mason,* 132 F. 245 (1st Cir. 1904) at 247:

> It is quite clear that Congress while intending to extend to poor and meritorious suitors the privilege of having their wrongs redressed without the ordinary burdens of litigation, at the same time intended to safeguard members of the public against an abuse of the privilege by evil-minded persons who might avail themselves of the shield of immunity from costs for the purpose of harassing those with whom they were not in accord, by subjecting them to vexatious and frivolous legal proceedings.

Quoted with approval in *Durhart v. Carlson,* 469 F.2d 471, 478 (10th Cir. 1972), cert. den. 410 U.S. 958 (1973). Subsection (d) of Section 1915, *supra,* thus "empowers the court to monitor the action to the end of avoiding or minimizing abusive prosecutions by indigent plaintiffs who seek to exploit or to abuse the generous purposes of the statute." Mann v. Leeke, 73 F.R.D. 264, 265 (D.S.C. 1974), aff'd 551 F.2d 307 (4th Cir. 1977). See, generally, Note, *Petitioner to Sue in Forma Pauperis: Standards and Procedures for the Exercise of Judicial Discretion,* 56 Boston L. Rev. 745, 746, 747 (1976).

As indicated by Judge Elmo B. Hunter, *Green v. Wyrick,* 428 F.Supp. 732, 735 (W.D.Mo. 1976), and *Green v. Garrott,* 71 F.R.D. 680 (W.D.Mo. 1976), and by a substantial number of other federal jurists, plaintiff has "a continuing history of engaging in gross abuse of the judicial process which is impeding the ability of the judiciary to carry out its proper functions." This willful abuse of process has also been conducted in the state courts, as illustrated by a recent state court characterization of plaintiff's activities as "a calculated abuse of process of the same or similar nature as that condemned by the federal district court." Clovis Carl Green, Jr. v. State of Missouri, Civil Action No. 78 2824 (Mo.Cir.Ct., 8/24/78, unpublished opinion). A partial catalogue of the literally "hundreds" of lawsuits initiated by plaintiff, involving both the trial and appellate courts of the state and federal judicial systems, appears in *Green v. Garrott,* 71 F.R.D. 680, 685-92 (W.D.Mo. 1976), and *Green v. Wyrick,* 414 F.Supp. 343, 353 (W.D.Mo. 1976). To that list should be added the thirty-four additional actions plaintiff has filed in this Court since the compilation of that listing: *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 158-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 173-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 180-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 183-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 186-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 76 CV 206-C (W.D. Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* Civil Action No. 76 CV 205-C (W.D.Mo. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* Civil Action No. 77 4106 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Carl White, et al.,* Civil Action No. 77 4026 CV-C (W.D.Mo.

1977); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* Civil Action No. 77 4306 CV-C (W.D.Mo. 1977); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections, et al.,* Civil Action No. 77 4315 CV-C (W.D. Mo. 1977); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* Civil Action No. 78 4027 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4028 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4055 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* Civil Action No. 78 4056 CV-C (W.D. Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Division of Corrections,* Civil Action No. 78 4057 CV-C (W.D.Mo. 1978); *Clovis Carl Green v. Donald W. Wyrick,* Civil Action No. 78 4058 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 78 0055 CV-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections,* Civil Action No. 78 4106 CV-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4107 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Civil Action No. 78 4148 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.,* Civil Action No. 4201 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald R. Jenkins, et al.,* Civil Action No. 78 4200 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Clerk, United States District Court for the Western District of Missouri, et al.,* Civil Action No. 78 4203 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Sgt. Dearixon, et al.,* Civil Action No. 78 4207 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 78 4216 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Lt. Durham, et al.,* Civil Action No. 78 4222 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Joseph Keene, et al.,* Civil Action No. 78 4223 CV-C (W.D.Mo. 1978);

Clovis Carl Green, Jr. v. Jerry Archer, et al., Civil Action No. 78 4224 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Lt. Beckley, et al.,* Civil Action No. 78 4225 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Mr. Dawson, et al.,* Civil Action No. 78 4226 CV-C (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Susan Stanton,* Civil Action No. 78 0737 CV-W-4-R (W.D.Mo. 1978); *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* Civil Action No. 77 0076 CV-W-4-R (W.D.Mo. 1978); and *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 78 0055 CV-W-4-R (W.D.Mo. 1978); the four actions filed in the United States District Court for the Eastern District of Missouri: *Clovis Carl Green, Jr. v. Carl White,* Civil Action No. 78 20-C (E.D.Mo. 1978); *Clovis Carl Green, Jr. v. Carl White, et al.,* Civil Action No. 78 1144-C(3) (E.D.Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* Civil Action No. 76 452 C(2) (E.D.Mo. 1978); and *Clovis Carl Green, Jr. v. Dr. Harold Robb,* Civil Action No. 76 421-C(2) (E.D.Mo. 1978); the sixty-six actions filed in the United States Court of Appeals for the Eighth Circuit; *Clovis Carl Green, Jr. v. Edward Haynes, et al.,* No. 76-1802 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.,* No. 76-1929 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.,* No. 76-1940 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.,* No. 76-1941 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter,* No. 76-1942 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* No. 76-1943 (8th Cir. 1976); *In re: Clovis Carl Green, Jr.,* No. 78-1442 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* No. 78-1698 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Carl White,* No. 78-1714 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. John Regan, et al.,* Misc. No. 76-8114 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Edward*

Haynes, et al., Misc. No. 76-8126 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White,* Misc. No. 76-8133 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. William H. Becker, et al.,* Misc. No. 76-8135 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo Hunter, et al.,* Misc. No. 76-8140 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.,* Misc. No. 76-8147 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8148 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin,* Misc. No. 76-8156 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter,* Misc. No. 76-8164 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States, et al.,* Misc. 76-8175 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. H. Kenneth Wangelin, et al.,* Misc. No. 76-8176 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter,* Misc. No. 76-8177 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8184 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.,* Misc. No. 76-8185 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Haynes, et al.,* Misc. No. 76-8189 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Miss. No. 76-8201 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76 8202 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8209 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8228 (8th Cir. 1976); *Clovis Carl Green, Jr. v. United States, et al.,* Misc. No. 76-8229 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.,* Misc. No. 76-8249 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Misc. No. 76-8250 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* Misc. No. 76-8253 (8th Cir. 1976); *Clovis Carl Green, Jr. v. Carl White, et al.,* Misc. No. 77-8029 (8th Cir. 1977); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.,* Misc. No.

77-8145 (8th Cir. 1977); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 77-8251 (8th Cir. 1977); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 77-8253 (8th Cir. 1977); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8021 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8022 (8th Cir. 1978); *Clovis Carl Green, Jr. v. U.S. District Court, et al.*, Misc. No. 78-8043 (8th Cir. 1978); *Clovis Carl Green, Jr. v. U.S. District Court for the Western District of Missouri*, Misc. No. 78-8049 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8054 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Richard H. Ralston, et al.*, Misc. No. 78-8055 (8th Cir. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, Misc. No. 78-8059 (8th Cir. 1978); *Clovis Carl Green, Jr. v. United States, et al.*, Misc. No. 78-8095 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Richard Ralston, et al.*, Misc. No. 78-8096 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8105 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Richard Ralston, et al.*, Misc. No. 78-8126 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick, et al.*, Misc. No. 78-8164 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Richard Ralston, et al.*, Misc. No. 78-8167 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Donald Wyrick*, Misc. No. 78-8171 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8172 (8th Cir. 1978); *Clovis Carl Green, Jr. v. U.S. District Court for the Eastern District of Missouri*, Misc. No. 78-8184 (8th Cir. 1978); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, Misc. No. 78-8189 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Hon. Elmo B. Hunter, et al.*, Misc. No. 78-8191 (8th Cir. 1978); *Clovis Carl Green, Jr. v. Clerk, U.S. District Court, et al.*, Misc. No. 78-8199 (8th Cir. 1978); *Clovis Carl Green, Jr. v.*

Donald W. Wyrick, et al., Misc. No. 78-8204 (8th Cir. 1978); *In the Matter of: Green and Steven Dale Davis, Petitioners*, Misc. No. 78-8205 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8214 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8215 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8216 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8217 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8219 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8220 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8221 (8th Cir. 1978); *In re Green, Petitioner*, Misc. No. 78-8222 (8th Cir. 1978); *In re: Green, Petitioner*, Misc. No. 78-8225 (8th Cir. 1978); the eleven actions filed in the Supreme Court of the United States: *Clovis Carl Green, Jr. v. United States*, No. 72-5880 (1972); *Clovis Carl Green, Jr. v. United States*, No. 73-5433 (1973); *Clovis Carl Green, Jr. v. Elmo B. Hunter, et al.*, No. 75-5421 (1975); *Clovis Carl Green, Jr. v. Elmo B. Hunter, et al.*, No. 76-5155 (1976); *Clovis Carl Green, Jr. v. H. Kenneth Wangelin, et al.*, No. 76-5195 (1976); *Clovis Carl Green, Jr. v. Donald W. Wyrick*, No. 76-5317 (1976); *Clovis Carl Green, Jr. v. United States District Court for the Western District of Missouri*, No. 77-6379 (1977); *Clovis Carl Green, Jr. v. Elmo B. Hunter*, No. 77-6362 (1977); *Clovis Carl Green, Jr. v. Elmo B. Hunter*, No. 77-6555 (1977); *Clovis Carl Green, Jr. v. Missouri Board of Probation & Parole*, No. 78-5407 (1978); and *Clovis Carl Green, Jr. v. Richard Ralston*, No. 78-5351 (1978); the eight actions filed in the Supreme Court of Missouri: *Clovis Carl Green, Jr. v. Donald Wyrick*, No. 59664 (Mo. 1976); *Clovis Carl Green, Jr. v. Director, Division of Corrections*, No. 60743 (1978); *Clovis Carl Green, Jr. v. Donald R. Jenkins, et al.*, No. 60923 (Mo. 1978); *Clovis Carl Green, Jr. v. State of Missouri, et al.*, No. 60924 (Mo. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole*, No. 60325

(Mo. 1978); *Clovis Carl Green, Jr. v. Director, Missouri Division of Corrections,* No. 60938 (Mo. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 60945 (Mo. 1978); and *Clovis Carl Green, Jr. v. Circuit Court of Cole County, Missouri,* No. 61061 (Mo. 1978); the seventeen actions filed in the Missouri Court of Appeals: *Clovis Carl Green, Jr. v. Henry R. Bratkowski,* No. 028769 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole,* No. 028771 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Edward Haynes,* No. 028770 (Mo.App. 1976); *In Re Clovis Carl Green, Jr. v. Donald Wyrick,* No. 028854 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 028949 (Mo.App. 1976); *Clovis Carl Green, Jr. v. Donald Wyrick,* No. 029110 (Mo.App. 1976); *Clovis Carl Green, Jr., et al. v. Donald W. Wyrick,* No. 30180 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Circuit Court of Jackson County, Missouri,* No. 30359 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Honorable Byron Kinder and Hon. James T. Riley,* No. 30360 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Missouri Board of Probation & Parole,* No. 30365 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Division of Corrections and Donald Wyrick,* No. 30373 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri and Donald Wyrick,* No. 30374 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30436 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30454 (Mo.App. 1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. 30464 (Mo.App. 1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 30474 (Mo.App. 1978); and *Clovis Carl Green, Jr. v. Cole County Circuit Court,* No. 30520 (Mo.App. 1978); the four actions filed in the Circuit Court of Jackson County, Missouri: *Clovis Carl Green, Jr. v. State of Missouri,* No. CV 78-2295 (1978); *Clovis Carl Green, Jr. v. State of Missouri,* No. CV 78-2360 (1978); *Clovis Carl Green, Jr. v. State of*

Missouri, No. CV 78-2510 (1978); and *Clovis Carl Green, Jr. v. State of Missouri,* No. CV 78-2824 (1978); and the fifteen actions filed in the Circuit Court of Cole County, Missouri: *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 28677 (1976); *Clovis Carl Green v. Director, Division of Corrections,* No. 28710 (1976); *Clovis Carl Green, Jr. v. Department of Probation and Parole,* No. 29133 (1977); *Clovis Carl Green, Jr. v. Department of Probation and Parole and Director, Division of Corrections,* No. 30184 (1978); *Clovis Carl Green, Hayes, et al. v. Donald W. Wyrick,* No. 30214 (1978); *Clovis Carl Green, Jr., et al. v. Director, Division of Corrections, et al.,* No. 30270 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 30292 (1978); *Clovis Carl Green, Jr. v. Governor, et al.,* No. 30661 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole,* No. 30665 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole,* No. 30663 (1978); *Clovis Carl Green, Jr. v. Donald W. Wyrick,* No. 30665 (1978); *Clovis Carl Green, et al. v. Director, Division of Corrections, et al.,* No. 30685 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections,* No. 30614 (1978); *Clovis Carl Green, Jr. v. Board of Probation and Parole,* No. 30615 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections,* No. 30634 (1978); *Clovis Carl Green, Jr. v. Director, Division of Corrections, et al.,* No. 30895 (1978).

In *Green v. Wyrick,* Misc. No. 76-8096 (8th Cir. June 3, 1976, unpublished opinion), the United States Court of Appeals stated, "[T]here is strong reason to believe that [Clovis Carl Green, Jr.,] may be seriously abusing his right to access to the courts for redress for grievances . . .". As evidenced by the foregoing, that belief is a reality. As stated by Judge Donald P. Lay, in *Green v. Garrott,* Misc. No. 76-8184 (8th Cir., Nov. 2, 1976, unpublished opinion):

> [T]hrough gross abuse of the legal process, Green's situation runs parallel with the epic story of the boy who yelled "wolf" too many times — when he actually needed help nobody would believe him. It may be that within the multitude of claims Mr. Green has filed, he has somewhere alleged a legitimate grievance. Notwithstanding the meticulous efforts of busy federal district and appellate judges to find a real grievance, one may nonetheless have been overlooked. Mr. Green has only himself to blame for this. In addition, primarily due to abusive writ writing by prisoners such as Green, the Supreme Court unfortunately in my opinion, has begun to place substantive and procedural restrictions on prisoners' rights previously recognized under the Great Writ. Cf. Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed. 2d 1067 (1976) * * * It is common sense that conscientious recognition of prison rights can continue only as long as the process is not abused by prisoners to the extent that renders it meaningless. We are coming dangerously close to that time.

And, judging from his correspondence addressed to this Court, plaintiff intends to continue his abuse of process at an accelerated, continued and unabated pace. For, by letter received by the Court on November 1, 1978, plaintiff states, "I have completed the ten separate civil rights complaints that are ready to be notarized and mailed" and requests, "[p]lease send me another ten more civil rights complaint forms and five more sets for filing habeas corpus petitions at once, as I wish to file more court suits." Moreover, plaintiff's intentional abuse of process extends beyond the mere filing of civil actions in the state and federal courts. In virtually every case, plaintiff has made the task of orderly processing extremely difficult if not impossible, by the submission, often ex parte, of countless

motions and documents and his deliberate avoidance of compliance with procedural rules. Green v. Wyrick, 428 F.Supp. 732, 736 (W.D.Mo. 1976); and Clovis Carl Green, Jr. v. Carl White, et al., Civil Action No. 77 4026 CV-C (W.D.Mo.).

Aside from the sheer quantity of plaintiff's litigation, quality of his claims also demonstrates the maliciousness of the legal actions which he has initiated against prison officials, court personnel, and judicial officers. The present action typifies plaintiff's legal actions. Here, he alleges, in broad and conclusory fashion, that more than two years ago he was subjected to disciplinary proceedings which were initiated upon a "false charge" in retaliation for his legal activities. This claim is precisely like those presented in the causes styled, *Clovis Carl Green, Jr. v. Donald Wyrick, et al.*, Civil Action No. 77 4315 CV-C (W.D.Mo.), and *Clovis Carl Green, Jr. v. Missouri Board of Probation and Parole, et al.*, Civil Action No. 77 4306 CV-C (W.D. Mo.), in which five separate prison disciplinary proceedings were challenged on identical, or very similar grounds. In those actions, plaintiff alleged that prison disciplinary actions had been, and were continuing to be, initiated against him by prison officials, resulting in his confinement in segregated units, in retaliation for his legal activities and for his attempts to proselytize on behalf of his newly-founded "religion." After a full three-day evidentiary hearing, at which plaintiff was represented by able counsel, appointed by the Court, it was clearly evident that "in each instance of disciplinary action shown . . ., plaintiff [had] not been disciplined for his legal activities, but rather for clear violations of prison rules and regulations." *Id.* (unpublished Report and Recommendation of May 10, 1978). And a later evidentiary hearing set in those cases, the purpose of which was to adjudicate plaintiff's "religious"

claims, was aborted by his dismissal of those actions. Another evidentiary hearing, set in the cause styled, *Clovis Carl Green, Jr. v. Donald Wyrick,* Civil Action No. 78 4216 CV-C (W.D.Mo.), to determine his claim that other inmates and prison supervisory personnel had physically abused him, was again dismissed by plaintiff on the morning of trial. Thus, it is clear that, in virtually every instance in which plaintiff's claims have appeared colorably valid on the face of his pleadings, an evidentiary probing of those claims has revealed total insubstantiality. See: *Green v. Wyrick,* 428 F.Supp. 732, 763 (W.D.Mo. 1976), and *Green v. United States of America, et al.,* Civil Action No. 76 CV-100-C (E.D.Mo. 1976).

"[N]o one, rich or poor, is entitled to abuse the judicial process." Hardwick v. Brinson, 523 F.2d 798, 800 (5th Cir. 1975); Ex parte Tyler, 70 F.R.D. 456 (W.D.Mo. 1976). Accordingly, in light of plaintiff's history* in this, and other courts, of initiating frivolous and malicious litigation against prison authorities, parole officials, court personnel, judicial officers, and other governmental officers, and his demonstrated abuse of the judicial process at public expense, involving extreme costs in terms of time and expense on the part of state and federal judicial and executive personnel, and the public as a whole,** this action should be characterized as "malicious" and should be dis-

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*A court "has authority to consult its own records for the purpose of determining whether an action being prosecuted in forma pauperis, notwitstanding the application so to do and the supporting affidavit regular and sufficient on their face, is in fact frivolous and malicious and it may dismiss the action if it finds it is frivolous and malicious." Durhart v. Carlson, *supra.* See also: Conway v. Oliver, 429 F.2d 1307 (9th Cir. 1970).

**The litigious activities of petitioner "have cost the government, in a conservative estimate, thousands of dollars . . .". *Clovis Carl Green, Jr. v. United States of America, et al.,* Civil Action No. 76 CV 100 CV-C (W.D.Mo. 1976) (unpublished opinion of Judge Wangelin).

missed for that reason alone. This does not mean, of course, that in the face of averments setting forth extreme circumstances petitioner's pleadings will not be entertained and adjudicated. But where, as here, broad, conclusory allegations are set forth in a "shotgun" manner, petitioner should not be subsidized in his abuse of process.

For the reasons stated above, and pursuant to the provisions of 28 U.S.C. § 636, it is therefore

RECOMMENDED that the above-styled cause be dismissed as "malicious" under 28 U.S.C. § 1915(d).

Under the provisions of 28 U.S.C. § 636(b)(1)(C), petitioner may make specific written exceptions to any or all of the foregoing recommendations within 10 days of his receipt thereof.

/s/ Richard H. Ralston
United States Magistrate

Dated this 15th day of November, 1978, at Kansas City, Missouri.

APPENDIX F

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI

Case No. 78-0020-C

CLOVIS CARL GREEN, JR., REG. NO. 27914,
MISSOURI STATE PENITENTIARY, BOX 900,
JEFFERSON CITY, MISSOURI,
Plaintiff,

vs.

CARL WHITE, SUPERINTENDENT, MISSOURI
TRAINING CENTER FOR MEN, BOX 7,
MOBERLY, MISSOURI,
Defendant.

CIVIL RIGHTS COMPLAINT UNDER
42 U.S.C. SECTION 1983

(Filed July 19, 1978)

COMES NOW THE PLAINTIFF PRO SE, CLOVIS CARL GREEN, JR., and respectfully prays that this Court order the Defendant to pay the Plaintiff the sum of $1,000,-000 (One Million Dollars) for the violation of the constitutional rights of the Plaintiff. In support of such relief, the Plaintiff states:

JURISDICTION

The jurisdiction of this court is invoked under 42 U.S.C. Section 1983 and the U.S. Constitution.

CLAIMS

1.) The Plaintiff was in the Missouri Training Center for Men in Moberly, Missouri in 1976.

2.) The Plaintiff is a minister of the HUMAN AWARENESS UNIVERSAL LIFE CHURCH and said Church believes in God, has orthodox church doctrines, has a church government, is legally incorporated in the State of Missouri as a church, and is recognized by the Internal Revenue Service as a church and tax-exempt.

3.) During the time that the Plaintiff was in the Moberly prison, the Defendant suppressed the freedom of religion of the Plaintiff and other inmate church members, denied the practice of said religion in any manner, violating the First Amendment.

4.) The Plaintiff filed a court suit in this court against the Defendant and Donald W. Wyrick, warden, Missouri State Penitentiary, Jefferson City, Missouri.

5.) After receiving a copy of that court action, the Defendant and Donald W. Wyrick together threatened the Plaintiff that if he did not dismiss the pending court action and stop the church organizing in that prison, then they would transfer the Plaintiff to Missouri State Penitentiary in Jefferson City, Missouri.

6.) When the Plaintiff refused to dismiss the pending court action, then the Defendant ordered the Plaintiff transferred to Missouri State Penitentiary immediately. The official reason is that the Plaintiff made a threat against the life of a guard. However, at no time was the Plaintiff given a violation report on the threat, even though this is a very serious rule violation and all other inmates who make threats against the life of a guard are imme-

diately placed in Administrative Segregation for usually one year. This proves that the real reason for the transfer to Missouri State Penitentiary is due to the religion of the Plaintiff, and due to his court action as

ARGUMENTS OF LAW

The Plaintiff submits that "Prisoners retain their First Amendment rights relating to religious freedom." *Mukmuk v. Commissioner,* 529 F.2d 272 (2nd Cir., 1976), cert. denied, 96 S.Ct. 2238 (1976); *Cruz v. Beto,* 405 U.S. 319 (1972).

In *Howard v. Smyth,* 365 F.2d 428 (4th Cir., 1966), the court said:

> "State prisoner is not bereft of all his rights, but has right to immunity from punishment for making reasonable attempt to exercise his religion, even if religion is unorthodox."

Thus, it is unconstitutional for the Defendant to suppress and deny the freedom of religion of the Plaintiff while he was at Moberly prison, and it is unconstitutional for the Defendant to transfer the Plaintiff to Missouri State Penitentiary due to the religious practices of the Plaintiff.

The court then ruled in *U.S. ex rel. Cleggett v. Pate,* 229 F. Supp. 818 (1964), that

> "Confining a prisoner to segregation unit merely because of pendency of his Civil Rights Act case denies prisoner unhampered access to courts and is in violation of his constitutional rights."

In *Corby v. Conboy,* 457 F.2d 251 (2nd Cir., 1972), the court said:

> "Prisoners no less than other persons have constitutional right of access to courts, and prison authorities

> may neither place burdens on such right, nor *punish its exercise.*" (Emphasis Added).

In *Burns v. Swenson,* 430 F.2d 771 (8th Cir., 1970), the U.S. Court of Appeals for Eighth Circuit ruled:

> "Access of prisoners to court for purpose of presenting their complaints may not be denied or obstructed."

Thus, it is clear that the Defendant does not have the authority to transfer the Plaintiff to Missouri State Penitentiary due to his religion and due to his court action on the prison conditions and treatment. The Defendant violated the constitutional rights of the Plaintiff by his action.

RELIEF REQUESTED

WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

1.) That this Court order the Defendant to pay the Plaintiff $1,000.000 (One Million Dollars) for the violation of the constitutional rights of the Plaintiff.

2.) That this Court declare that the HUMAN AWARENESS UNIVERSAL LIFE CHURCH is a legitimate religion that must be recognized by the Defendant.

Respectfully submitted,

/s/ Clovis Carl Green, Jr.
Clovis Carl Green, Jr.

FORMA PAUPERIS AFFIDAVIT AND OATH

I, CLOVIS CARL GREEN, JR., do state under oath that due to my poverty that I am to pay the costs of these proceedings, that I have a meritorious action and I am entitled to relief from this court.

I, CLOVIS CARL GREEN, JR., do swear under oath that all statements herein are true and correct to the best of my knowledge and belief.

/s/ Clovis Carl Green, Jr.
Clovis Carl Green, Jr.

STATE OF MISSOURI
COUNTY OF COLE

SUBSCRIBED AND SWORN TO BEFORE ME ON JULY 17, 1978.

/s/ William J. Hinson
William J. Hinson
Notary Public

My Commission Expires: June 6, 1980.

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

Cause No. N78-20C

CLOVIS GREEN, JR.,
Plaintiff,

v.

CARL WHITE, Superintendent, MISSOURI TRAINING CENTER FOR MEN,
Defendant.

JUDGMENT

(Filed September 18, 1978)

A memorandum dated this day is hereby incorporated in and made a part of this judgment.

IT IS HEREBY ORDERED that defendant's motion for summary judgment be and is granted.

IT IS FURTHER ORDERED that plaintiff's motions for an immediate trial by jury and for a prompt trial by jury be and are denied.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Carl White have judgment against plaintiff Clovis Green, Jr., in this cause. Plaintiff's complaint is hereby dismissed with prejudice.

Dated this 18 day of September, 1978.

/s/ J. H. Meredith
United States District Judge

APPENDIX H

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1714

CLOVIS CARL GREEN, JR.,
Appellant,

- vs -

CARL WHITE,
Appellee.

MOTION FOR REHEARING IN BANC

(Filed January 16, 1979)

Comes now the Appellant Pro Se, Clovis Carl Green, Jr., and prays that this Court grant a rehearing en banc. In support, Appellant states:

1) The Appellant alleged that he was threatened to be transferred from Moberly prison if he did not stop his court suit and church activities. The Appellant stated that he did not threaten the guard and did not admit the threat. The district court erred in accepting the prison records as conclusive evidence.

In Thomas v. Pate, 493 F.2d 151 (7th Cir., 1974), the court said: "For purpose of determining whether inmate's complaint was sufficient to state cause of action under Civil Rights Act for denial of due process in disciplinary proceedings, allegation of complaint would be accepted as true." See also: Cooper v. Pate, 378 U.S. 546 (1964).

In fact, the prison records also show that the Appellant was not arrested and placed in segregation after the threat was made and no violation report was issued. The practice and procedure of the prison is to immediately place any inmate in segregation if he threatens a guard.

2) The Appellant submits that the district court should not dismiss a prisoner's court suit ". . . unless it appears beyond doubt that Plaintiff can prove no set of facts in support of his claims which would enable him to relief." Bolding v. Holhouser, 575 F.2d 461 (4th Cir., 1978); Neal v. State of Georgia, 469 F.2d 446 (5th Cir., 1972); Marshall v. Brierly, 461 F.2d 929 (1972); Horn v. People of California, 321 F. Supp. 961 (E.D. Cal., 19

3) The Appellant submits that he must receive a trial on the transfer due to court actions. Ex Parte Hall, 312 U.S. 546 (1941); Landman v. Peyton, 370 F.2d 135 (4th Cir., 1966); Smartt v. Avery, 370 F.2d 788 (6th Cir., 1967); Johnson v. Avery, 89 S. Ct. 747 (1969); Campbell v. Beto, 460 F.2d 165 (1972).

4) The Appellant submits that he must receive a trial on the transfer due to church activities. Crub v. Beto, 92 S. Ct. 1079 (1972); Mukmuk v. Commissioner, 529 F. 2d 272 (2nd Cir., 1975), cert. denied 96 S. Ct. 2238 (1976); Howard v. Smyth, 365 F. 2d 428 (4th Cir., 1966); Chapman v. Kleindienst, 507 F. 2d 1246 (7th Cir., 1974); Kauffman v. Johnson, 454 F. 2d 264 (1972).

5) If the Appellant is denied a trial due to prison records only, then the prison officials can then fabricate false statements in prison records to defeat the civil rights complaint. The prison does not have any written statements signed by the Appellant in which the Appellant admitted the threat.

6) This court did not rule on the issue of the violation of the freedom of religion during the time that the Appellant spent at Moberly under the Human Awareness Universal Life Church.

Wherefore, Appellant prays that this Court grant a rehearing en banc.

Respectfully Submitted,

/s/ Clovis Carl Green, Jr.

APPENDIX I

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1714

CLOVIS CARL GREEN, JR.,
Appellant,

-vs-

CARL WHITE,
Appellee.

MOTION FOR REHEARING EN BANC

(Filed January 11, 1979)

Comes now the Appellant Pro Se, Clovis Carl Green, Jr., and prays that this Court will grant a rehearing in banc. In support, Appellant states:

1) This Court erred in its decision supporting the district court's granting of summary judgement. There was a dispute in material issue in this case, so summary judgment was not proper. The Appellant denied making the alleged threat and denied any admission that he made the alleged threat. The Appellant claimed that he was in his room at the time of the alleged threat. The records of the Missouri Division Of Corrections show that (a) the Appellant was not arrested at once and placed in segregation but remained in general prison population for 24 hours after the threat was made, and according to prison practice, if an inmate threatens a guard, the inmate is placed in segregation immediately and (b) there was no rule violation report issued against the Appellant, and according to prison rule book, if an inmake makes a threat

against a guard, he is given a violation report. There is a serious conflict in the records of the Missouri Division Of Corrections so the court cannot grant summary judgment, believing only part of the records.

2) This Court erred in determining that there should be no trial on the issue of the transfer. The Appellant alleged that the prison officials threatened him that he would be transferred if the court action was not dismissed, and church activities ended. The district court must accept that claim as true and cannot dismiss the civil rights complaint without trial to allow the Appellant the chance to prove his claim, as the claim would entitle him to relief. The district court cannot dismiss the court suit unless it appears beyond doubt that Appellant could prove no set of facts to support his claims.

3) The Appellant presented the claims that the Appellee violated the freedom of religion of Appellant during the time he was at Moberly prison, which is a meritorious issue under Green v. White, 545 F.2d 1099 (8th Cir., 1976). This Court ignored ruling on this issue in its court ruling in this case, with no explanation. The Appellant connot appeal to the U.S. Supreme Court on this issue if this Court does not issue a ruling on that claim, denying access to the courts.

Wherefore, Appellant prays that this Court will grant a rehearing en banc in this case.

Respectfully Submitted,

/s/ Clovis Carl Green, Jr.